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PROPOSALS TO IMPROVE THE QUALITY OF SERVICES PROVIDED BY THE SOCIAL SECURITY ADMINISTRATION

HEARING

BEFORE THE

SUBCOMMITTEE ON SOCIAL SECURITY

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

SEPTEMBER 22, 1988

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PROPOSALS TO IMPROVE THE QUALITY OF SERVICES PROVIDED BY THE SOCIAL SECURITY ADMINISTRATION

THURSDAY, SEPTEMBER 22, 1988

House of Representatives,
Committee on Ways and Means,
Subcommittee on Social Security,
Washington, DC.

The subcommittee met pursuant to call at 10 a.m. in room B-318, Rayburn House Office Building, Hon. Jim Moody presiding.

[The press release announcing the hearing follows:]

FOR IMMEDIATE RELEASE
THURSDAY, SEPTEMBER 8, 1988

SUBCOMMITTEE ON SOCIAL SECURITY #12
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-1721

ANDY JACOBS, JR. (D., IND.), CHAIRMAN, SUBCOMMITTEE ON SOCIAL SECURITY, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES A HEARING ON PROPOSALS TO IMPROVE THE QUALITY OF SERVICES PROVIDED BY THE SOCIAL SECURITY ADMINISTRATION, ON THURSDAY, SEPTEMBER 22, 1988, AT 10:00 A.M., IN ROOM B-318 RAYBURN HOUSE OFFICE BUILDING

Andy Jacobs, Jr. (D., Ind.), Chairman of the Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, announced today that the Subcommittee will hold a hearing to examine proposals to improve the quality of services provided by the Social Security Administration, and to enhance protections for workers and beneficiaries. The hearing will be held on Thursday, September 22, 1988, in room B-318 Rayburn House Office Building, beginning at 10:00 a.m.

BACKGROUND:

In recent years, the Social Security Administration (SSA) has been engaged in an effort to implement simultaneously two major administrative changes: a reduction of 20 percent in its overall manpower and a comprehensive modernization of its technology. SSA's strategy for achieving these dual objectives has included a number of specific changes: modernization of its systems for storing information about workers and beneficiaries; redesign of its telephone system and the establishment of a national "800" number; an enhancement of the agency's capacity to provide current workers with periodic reports on their past tax contributions and future benefits; and a number of changes in the forms and documents used by applicants and beneficiaries in transacting business with the agency. All these changes have been implemented in the context of a steady manpower reduction at SSA.

There have been indications that this effort may have strained SSA's capacity to provide service of high quality to the public. Reports from some areas of the country indicate that shortages in clerical personnel have caused delays in the processing of applications and decisions. The portion of initial SSA decisions denying applications for disability benefits which are overturned is on the increase. A large backlog of erroneous earnings records has accumulated, uncorrected, at the agency for a number of years, and its recent efforts to properly credit these earnings have been characterized by many as inadequate. Furthermore, there is evidence of continuing problems of accessibility to SSA teleservice centers, as well as instances in which both the centers and local offices failed to provide inquirers with complete and accurate information.

SCOPE OF THE HEARING:

The hearing will examine measures to improve the Social Security Administration's service to the public and to provide workers and beneficiaries with increased protections in dealing with the agency. Witnesses are invited to focus particular attention on proposals aimed at service areas where simultaneous staff cuts and rapid modernization may have caused quality to deteriorate. These include: measures aimed at improving the reliability of SSA's telephone service, providing the public with increased ability to obtain and correct wage records, and improving the recourse for individuals who lose benefits as a result of having received inaccurate or misleading information from the agency.

(MORE)

Witnesses are invited to comment specifically on the provisions of H.R. 5250, the Social Security Beneficiary Protection Act, introduced by Representatives Sander M. Levin (D., Mich.), and Jim Moody (D., Wis.). Key provisions of the bill would:

(1) require SSA to inform applicants for benefits of SSA's difficulties in properly crediting earnings, furnish them with a year-by-year summary of their covered income, and allow them to correct their earnings records after expiration of the current time limit based on reliable tax or employer information;

(2) require SSA to carry out demonstration projects testing the feasibility of generating a record of information provided to callers by its teleservice centers;

(3) allow individuals who fail to appeal a denial of benefits because they were provided with incorrect information by SSA to reapply for benefits for the time period at issue;

In addition, H.R. 5250 includes provisions governing the recoupment of overpayments, outreach to the homeless by SSA, and the agency's standard for assessing the good faith of applicants and beneficiaries.

The Subcommittee also invites witnesses to comment on other proposals aimed at improving the quality of SSA services and enhancing protections for workers and beneficiaries, and to offer their own recommendations.

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD:

Requests to be heard at the hearing must be made by telephone to Harriett Lawler or Diane Kirkland [(telephone 225-1721)] by close of business Thursday, September 15, 1988. In order to facilitate scheduling, requests should indicate the specific issues that the witness wishes to address and the relative priority of each issue if more than one issue in indicated. The request should be followed by a formal written request addressed to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, room 1102 Longworth House Office Building, Washington, D.C. 20515. The Subcommittee will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee staff [(202) 225-9263)].

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are required to summarize briefly their written statements in no more than five minutes. THE FIVE-MINUTE RULE WILL BE STRICTLY APPLIED. The full statement will be included in the printed record.

In order to assure the most productive use of the limited amount of time available to question witnesses, those scheduled to appear before the Subcommittee are required to submit 100 copies of their prepared statements to the Subcommittee on Social Security office, room B-316 Rayburn House Office Building, at least 24 hours in advance of their scheduled appearances. Failure to do so may result in the witness being denied the opportunity to testify in person.

(MORE)

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Persons submitting written statements for the printed record of the hearing should submit six (6) copies by the close of business, Thursday, October 6, 1988, to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, room 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing a written statement for the record of the printed hearing wish to have their statements distributed to the press and the interested public at the hearing, they may provide 75 additional copies for this purpose to the Subcommittee office, room B-316 Rayburn House Office Building, during the course of the public hearing.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will **not** be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and public during the course of a public hearing, may be submitted in other forms.

Mr. Moody. Good morning. The Subcommittee on Social Security will come to order. I am standing in for the chairman, Congressman Andy Jacobs, who will be joining us later.

This morning the Subcommittee on Social Security is holding a hearing to examine proposals for improving the quality of services provided by the Social Security Administration and for expanding the protections available to workers and beneficiaries in dealing with the agency.

For nearly a decade, the Social Security Administration has been engaged in an effort to implement two major administrative reforms: A comprehensive modernization of its technology and a reduction of 20 percent in its personnel. Most observers of SSA's performance agree that it has worked hard to maintain the quality of this services during this period of rapid change. However, there are growing indications that continuing staff cuts coupled with rapid modernization have caused service quality to deteriorate significantly in some areas. For example, the subcommittee has received a number of complaints about errors in the agency's processing of information about applicants and beneficiaries; about inaccurate or incomplete information being provided to the public by SSA's telephone staff and case workers and about reduced public accessibility to the agency, particularly by minorities, the poor, and the disabled.

Some minorities are experiencing particularly difficulties in accessibility.

To address these problems, my colleague, Representative Sander Levin, has introduced H.R. 5250, the Social Security Beneficiary Protection Act, of which I am pleased to be an original cosponsor. This legislation includes provisions governing the correction of erroneous earnings records, the collection of overpayments, documentation of information provided by SSA teleservice centers, and the recourse open to individuals who receive misleading or inaccurate information from the Agency. In addition, others Members of Congress and organizations have offered other proposals for improving SSA services. The purpose of our hearing this morning is to assess the appropriateness and workability of these proposals in light of the actual problems that the public is experiencing with the Social Security Administration. To begin this process, I would like to call our first witness, Representative Sander Levin.

Mr. Levin.

STATEMENT OF HON. SANDER M. LEVIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Levin. Thank you very much. Mr. Chairman, I have a brief statement.

I have modified it in some ways in view of the testimony that I was able to review last night. We are here today because Social Security is clearly one of the most vital subjects that Members of Congress work on. Every day our case workers, called by different titles in different congressional offices, are helping our constituents with Social Security problems.

Every day our offices receive mail from people who are unhappy with the services they are receiving from the Social Security Administration. I might add we also receive some communications from people who are happy with the services. I don't want to indicate that everybody is unhappy.

But we do receive a substantial volume from people who do not feel they are receiving responsiveness, sometimes any kind of an answer or response from SSA. The legislation that you and I have introduced, and I am pleased that we can work closely together, is in response to these concerns, but we also know that SSA has been working itself to respond to similar complaints.

After reviewing Mr. Carozza's statement last night and the statements of a number of other witnesses and also documents from colleagues, it became clear that this hearing is an opportunity to take stock of where we are in the whole question of services. This hearing, therefore, becomes more a fact-finding inquiry than an immediate take-off point for a bill that will go to markup in the next few weeks.

The SSA statement is essentially a progress report on their welcomed efforts to improve services. The questions for this subcommittee are, I think, have these efforts gone far enough? How are they working? Are there still major gaps in the services being provided? Can legislative reforms be helpful as we all move to a vital common goal?

Many of the remaining witnesses, in the material I have been sent by our colleague, Mr. Cardin, by the Michigan Department of Social Services, by a person who works on behalf of persons who are under the domain of the Social Services Department of Michigan, by the Association of Retarded Citizens and several individuals, all indicate that there are significant problems that may well be best addressed by legislation.

It is my hope that all of the witnesses will listen carefully to each other. These hearings are most productive, especially a hearing of this nature, when the witnesses can comment on each other's remarks. By protocol and by tradition, we are going to take it seriatim.

The administration will testify at the beginning. Today it might have been helpful for all sides of the service debate to appear together so that we might review both the progress and the problems simultaneously. So I hope that the administration will be able to stay to hear the other witnesses. If Mr. Carozza, himself, can't remain because of time constraints, I hope other representatives of the administration will be here to listen, possibly to comment, if not right at this hearing, subsequently in communications with us.

The purpose of this hearing is to understand the reality the American public is facing when they have a question or a problem with their Social Security entitlement. I commend the chairman for holding this hearing, and I look forward to the testimony of all the witnesses. Mr. Chairman, you have summarized some of the provisions in our proposal, a proposal for a standard governing collection for overpayments, a proposal for telephone service center accountability demonstrations, and I am very concerned about this issue, as you are, and the availability and correction of earning records.

There has been some progress made, but I think much more needs to be undertaken. Standards for determining good faith, assistance to the homeless and we will hear testimony from SSA on that point, and understandable notices.

Among the complaints, the many we receive, perhaps more relate to the issue of understandability or legibility than any other area, and SSA will report on some progress. I hope we will be able to dig into it. Representation of claimants, an issue that we saw become very critical during our disability hearings, and the decision to appeal rather than to reapply, and the issue of res judicata.

Several cases have been brought to our attention, where I think people in the best of faith decided on one course, finding out later to their total surprise that they essentially were out of court by the application of res judicata, when there really wasn't what I think is a basic premise of res judicata, adequate notice to them in the first place.

I feel that we are all in the same boat. We have had somewhat tangential hearings here, if not adversarial hearings on the Social Security Administration. I hope today that we can proceed in a spirit of collaboration, combined with a digging into the facts so that with concern and commitment we can make our common efforts work even more effective.

Thank you very much, Mr. Chairman.

[The statement of Mr. Levin follows:]

STATEMENT OF THE HONORABLE SANDER LEVIN BEFORE THE SOCIAL SECURITY SUBCOMMITTEE, 9/22/88

Mr. Chairman:

Social Security affects the lives of every American, from the day they get their Social Security number until they draw the retirement or disability benefits to which they are entitled.

For over 50 years the Social Security Administration has worked with the American people to help them understand their rights and to secure their benefits. This relationship has traditionally been one of cooperation. There have been periods, most notably during the recent cycle of disability reviews, of confrontation, but on the whole SSA has tried hard to work in a nonadversarial role.

Still, congressional offices have been listening to a wide variety of complaints recently about the SSA. Some of these arise from the dramatic staffing reductions of the past years. This Subcommittee has been closely monitoring these cutbacks. I am very concerned about staffing, particularly as it affects the quality of service. I expect many of the witnesses today will address this issue.

Other problems, however, appear to be more the result of the policies, practices, and procedures of the SSA. Where this is the case, I believe it is incumbent upon the Congress and this Subcommittee to give direction to the SSA so that these problems do not arise.

As you know, our colleague Jim Moody and I have introduced H.R. 5250, The Social Security Beneficiaries Protection Act. This legislation was developed in cooperation with several senior citizen organizations to address some of the problems our constituents are having with the SSA.

H.R. 5250 has 9 elements that are linked by the belief that the SSA can better serve the public if the Act which it administers more clearly states the responsibilities of the Agency in particular cases. The bill is premised on a belief in the good faith efforts of the SSA to treat all beneficiaries fairly.

I would like to briefly describe the elements of the bill and the reasons they were included in the proposal.

Overpayments - although SSA now has the authority to enter into payment schedules to collect overpayments, there continue to be reports of cases were all or most of a person's check has been withheld, causing them severe hardship. I am particularly concerned where this hits people of limited means. The bill proposes a test whereby the SSA could only withhold on a schedule that would not cause undue financial hardship.

Telephone Service Centers - there are many, many complaints regarding incomplete and misleading telephone information, as well as busy signals and impolite operators. I am particularly concerned by this because of the SSA's stated policy of shifting public information efforts away from local offices to these faceless telephones. I strongly believe the SSA should move aggressively to improve efficiency and modernize their operations. But these activities must not be allowed to undercut service or endanger benefits.

We are proposing a demonstration project to test the feasibility of generating a follow-up letter with each telephone contact. This letter would have several benefits. It would create a record of the beneficiaries' contact with the SSA. It would help allay misunderstandings by reinforcing the oral advice with a written confirmation. It would also create some accountability by identifying the operator with whom the caller spoke.

There are clearly many questions that need to be resolved, both technical and administrative, in further refining the proposed demonstration. I believe, however, that the potential benefits are great enough that we should work to overcome any hurdles and begin implementing a program along these lines.

Earnings Records - last month we examined the sorry state of the SSA's earnings records. I think all beneficiaries have a right to know that earnings records are sometimes inaccurate and that there are ways in which they can be corrected. Our legislation would require the SSA to provide this information to individuals who apply for benefits and to waive any statute of limitation on corrections. If a person paid his or her Social Security tax and can prove it, they deserve to be credited. It is as simple as that.

I would also note that my colleagues Congressmen Crane, Frenzel, and Daub have recently introduced H.R. 5335, the Personal Earnings and Benefit Statements Study Authorization Act of 1988. This legislation takes an additional step by allowing SSA to use IRS data to send out unsolicited earnings statements. I think this might well be a useful compliment to the proposal outlined here.

Good Faith Standards - there are many circumstances in which the SSA must determine whether an individual acted in good faith, for example when deciding whether to waive an overpayment collection. We think the SSA should consider an individual's physical, mental, vocational, educational and linguistic limitations at these critical junctures.

Homeless - some SSA offices are already helping the homeless and state and local agencies have strong incentives to help those who may be eligible to qualify for benefits. At the same time, we believe the SSA should implement a formal program to ensure that all the doors at the SSA are always open to the least fortunate.

Understandable Notices - the SSA already has a project to simplify notices and they have made some important progress over the last few years. Our bill would make this effort a statutory mandate as well as adding the additional requirement that all notices contain the name and telephone number of a contact person. The IRS already does this, why can't the SSA? Our bill would also extend the special notice provisions for blind SSI beneficiaries to all blind disabled people.

Representation - our bill would make it simpler for SSA personnel to keep track of who was representing a claimant by adding the representatives name to the computer file. In this way, the SSA officer could just check the data base if there was ever a question as to whether a third party was authorized to represent a claimant. Our bill would also require the SSA to inform claimants how they can obtain legal assistance.

Res Judicata - this is an area that this Subcommittee touched on during our consideration of attorney's fees last year. At that time we heard testimony that many people reapply rather than appeal an adverse decision. If they are subsequently successful in qualifying for a benefit in a later application, they are generally precluded from collecting any benefit up to the initial adverse determination. It other cases, they may be precluded from ever challenging the decision, once the appeal period has run.

Our bill would require the SSA to develop a clear and understandable provision in their current notice to make sure that individuals know what is at stake when they decide whether to appeal or reapply. In addition, the bill would prevent the SSA from raising the res judicata defense if the beneficiary could show that he or she did not appeal because of misleading, incomplete, or incorrect information provided by the SSA.

Mr. Chairman, this legislation is not exhaustive. In preparing for this hearing, a number of additional problems have been brought to my attention they may merit amendments. I expect the witnesses today will also raise issues that we should address.

I believe this hearing is just the beginning of an important effort to address the problems our constituents have identified. I hope we can work cooperatively with the SSA, and I look forward to their testimony.

Mr. Chairman, I have received several letters addressing both H.R. 5250 and particular problems people are having. In particular, our colleague, Congressman Cardin, has identified several areas of concern. I would ask that these letters be included as part of the hearing record and that we consider their comments and stories as we develop any legislation.

Mr. Moody. All right.

Mr. Levin. I think I will rejoin you.

Mr. Moody. Why don't you just sit here, and we can proceed with the witnesses. You can participate. We have the Honorable Bob Clement, Member of Congress of Tennessee on our list. Is he present? Why don't we proceed since he is not here yet with Michael Carozza, Deputy Commissioner for Policy and External Affairs, accompanied by Herbert Doggette, Jr., Deputy Commissioner for Operations.

STATEMENT OF MICHAEL C. CAROZZA, DEPUTY COMMISSIONER FOR POLICY AND EXTERNAL AFFAIRS, SOCIAL SECURITY ADMINISTRATION, ACCOMPANIED BY HERBERT R. DOGGETTE, JR., DEPUTY COMMISSIONER FOR OPERATIONS

Mr. Carozza. Mr. Moody, I am Michael Carozza, Deputy Commissioner for Policy and External Affairs and with me today is Herbert Doggette, Deputy Commissioner for Operations.

I am pleased to have the opportunity to discuss SSA's service to the public and your and Mr. Levin's bill, H.R. 5250. I would like to summarize my statement and submit the full statement for the record.

Mr. Moody. Without objection.

Mr. Carozza. Thank you. To comment on Mr. Levin's testimony, we do have the testimony now from the other witnesses. Mr. Doggette and I will not be able to stay, but we will keep a representative here to make sure that we hear all of the questions and answers.

We certainly appreciate the spirit of cooperation that Mr. Levin expressed in his statement.

Commissioner Hardy and all of the 67,000 employees of the Social Security Administration have as one of our highest priorities improving Social Security service to the public. Thus, we fully support the objectives of H.R. 5250. I will begin by mentioning some of the exciting projects we already have underway to improve your quality of service.

First, new computer terminals have been installed in almost all of our local offices, and every office will have them by the end of this year. This new system provides immediate access on a computer screen to most of our data files so that we can process claims and answer questions more quickly and accurately.

Mr. Moody. I am sorry to interrupt. You say they will be at all centers by the end of the year.

Mr. Carozza. Yes, sir.

Mr. Moody. Thank you.

Mr. Carozza. Commissioner Hardy introduced in August a new personal earnings and benefit estimate statement, which drew such a wonderful response from the public that we were initially overwhelmed with calls to request it. The new statement would provide workers with the social security information they need to help them plan for their financial security.

Third, in October, we will implement a totally free 800 number so that people throughout our country can reach SSA at no charge to them. The 800 number dramatically improves accessibility and convenience of SSA service by extending the hours the public may talk with a representative to 7 a.m. to 7 p.m. nationwide, a 50-percent increase over our previous 8-hour work day.

At night and on weekends and holidays, automated answering equipment will provide general Social Security information and take messages for call backs on the next business day.

Mr. MOODY. Excuse me. Is that 7 a.m. to 7 p.m. whatever time zone the person is in?

Mr. CAROZZA. Whatever time zone the person is in.

Fourth, we have concluded with the IRS a memorandum of understanding on how we will reconcile differences in the wage reports employers send to our two agencies. Through this cooperative effort we will be able to credit additional earnings that could increase Social Security benefits in some cases.

Let me add that even with lower staffing levels, we have been able to both implement service improvements and increase the speed and accuracy with which we process claims and pay benefits. Also, client satisfaction with Social Security service has increased.

Earlier this year on a national survey, 87 percent of the respondents rated our services as either good or very good. This rating continues a steady improvement shown in surveys since 1984 when 77 percent rated Social Security service as good or very good.

Mr. Moody, I was asked to comment on the provisions in H.R. 5250 and my full statement discusses each of the areas covered by the bill. I will just make now some general comments about it. We appreciate your interest in assuring that Social Security beneficiaries and the public get prompt, accurate and fair treatment. Social Security touches so many lives and is so important to people's financial well-being that it is vital that SSA promptly furnish correct information and make that information easily available.

We are fully committed to the objectives of H.R. 5250 as evidenced by the many important initiatives that I have mentioned. However, in many instances, when and how these general objectives are translated into specific projects are dictated by factors such as systems capability, the time needed on planning new projects and training new employees.

We apply the general objectives of the bill. We think in most instances they can best be carried out by effective agency action in cooperation with the Congress and this committee, rather than being mandated by legislation. So as I have outlined today, we have made substantial improvements in the quality, availability and timeliness of our service, and we have been able to increase client satisfaction with that service.

We know there is always room for improvement. We will closely monitor our performance. In particular we would be pleased to keep you informed of all of our initiatives which relate to the objectives of H.R. 5250. However, as I stated, we would generally oppose the enactment of statutory provisions which spell out detailed administrative procedures. That concludes my testimony.

We would be happy to answer any questions you might have.

[The statement of Mr. Carozza follows:]

STATEMENT OF MICHAEL C. CAROZZA, DEPUTY COMMISSIONER FOR POLICY AND EXTERNAL AFFAIRS, SOCIAL SECURITY ADMINISTRATION

I am pleased to appear before you today to discuss SSA's service to the public and H.R. 5250, Mr. Levin's and Mr. Moody's bill.

One of Commissioner Hardy's highest priorities has been to improve SSA's service to the public and to better inform American workers about the benefits Social Security provides. Therefore, I am happy to have this opportunity to describe for you some of the major improvements we have made in serving the public. Many of the Commissioner's initiatives relate directly to the provisions in H.R. 5250.

RECENT SERVICE IMPROVEMENTS

I would like to begin by mentioning several exciting recent advances in the quality of service SSA can provide.

- First, new computer terminals have been installed in almost all of our local offices and every office will have them by the end of this year. This completes on schedule a plan to completely modernize the tools field office employees use to serve the public. This new Modernized Claims System provides immediate access on a computer screen to most of SSA's major data files so that we can process claims and answer questions for the public more quickly and accurately.
- Second, Commissioner Hardy introduced in August a new Personal Earnings and Benefit Estimate Statement (PEBES), which drew such a wonderful response from the public that we were initially overwhelmed with calls to request the statement. Within days, we increased our capacity to take requests, and in the last 7 weeks over 3 million forms to request the statement have been sent out. The new statement will provide workers with the Social Security information they need to help them plan for their financial security.
- Third, we will implement on October 1 a toll-free 800 number for much of the population who were served by one of our telephone service centers and those people who had to pay long distance charges to reach our local offices. We plan to phase this service in for the remainder of the country. The 800 number dramatically improves the accessibility and convenience of SSA service by extending the hours the public may talk with an SSA representative to 7 a.m. to 7 p.m. nationwide--a 50 percent increase over our previous 8-hour workday. This is made possible by the 800 number system's ability to route calls across time zones and by extending the hours of some east and west coast offices. At night, and on weekends and holidays, automated answering equipment provides general Social Security information, allows the public to conduct business (e.g., leave information to change address), and takes messages for callback the next business day.
- Fourth, we developed and piloted in three States a new service that allows parents to request a Social Security number for their newborn children as a part of the State birth registration process. The public's response to the enumeration-at-birth pilots was so positive that other States contacted SSA asking to join the project even before the pilots were completed. Currently, the service is available in six States. By early next spring enumeration at birth will be available in over 30 States, with additional States implementing it later in the year.
- Fifth, we have just concluded with the Internal Revenue Service (IRS) a Memorandum of Understanding on how we will reconcile differences in the wage reports employers send to our two agencies. Through this cooperative effort we will be able to credit additional earnings that could increase Social Security benefits in some cases. We also are working with

employers to improve the accuracy of their earnings reports and to ensure that every worker receives Social Security credit for all of his earnings.

Level of Service Remains High

Let me add that, even with lower staffing levels, we have been able to both implement these service improvements and increase the speed and accuracy with which we process claims and pay benefits.

Client satisfaction with SSA service also has increased, with 87 percent of respondents in a national survey earlier this year rating SSA's service as either good or very good. This rating continues the steady improvement shown in surveys using methodology developed by the General Accounting Office since 1984, when 77 percent rated SSA's service as good or very good.

These recent service improvements represent only the most exciting examples of our efforts to use the best technology available to provide better and more convenient service to the public.

PROVISIONS OF H.R. 5250

Mr. Chairman, you have asked that I comment specifically on the provisions in H.R. 5250, the "Social Security Beneficiaries Protection Act of 1988." Although I will discuss the areas covered by the bill in turn, I want to begin by making some general comments about H.R. 5250. First, we appreciate your interest in assuring that Social Security beneficiaries and the public get prompt, accurate, and fair treatment. Social Security touches so many lives and is so important to people's financial well-being that it is vital that SSA promptly furnish correct information and make that information easily available.

Commissioner Hardy and the 67,000 employees of SSA are fully committed to the general objectives of H.R. 5250 as evidenced by the many important initiatives that I have just mentioned. However, in many instances when and how these general objectives are translated into specific projects are dictated by factors such as systems capability and the time needed for planning and testing a new project, training new employees, and the like. While we applaud the general objectives of H.R. 5250, we think in most instances they can best be carried out by effective agency action, with oversight by the Congress, rather than being mandated by legislation.

Now I will go through the specific provisions of H.R. 5250 and discuss the ways that SSA is already carrying out the objectives of the bill as well as comment on the implications of those provisions.

Section 2: Standard Governing Collection of Overpayments

Section 2 of the bill would generally require recovery of overpayments on a schedule which would not cause undue financial hardship to the overpaid person.

SSA's policies in this area have two general objectives:

- to maintain the fiscal integrity of the Social Security program by collecting all debts promptly and fully; and
- to avoid undue financial hardship to beneficiaries.

When SSA notifies a beneficiary that he has been overpaid, we ask him to repay the overpaid amount. We also advise him that if he does not refund the full amount within 30 days, we plan to recover the overpayment by withholding his full monthly benefit.

However, we also advise him to get in touch with SSA if withholding the monthly benefit will cause hardship. If the beneficiary asks that not all of his benefits be withheld because it would cause financial hardship, we arrange an appropriate repayment schedule.

SSA employees have broad discretion in arranging a repayment schedule, provided the overpayment is repaid within 3 years. However, the repayment period may exceed 3 years in some circumstances. For about three-fourths of beneficiaries who are having their benefits withheld to recover an overpayment, arrangements are made to have only part of their benefits withheld. I believe this high incidence of partial withholding shows that SSA employees are doing an effective job of assuring that recovery of overpayments through benefit withholding does not cause undue financial hardship for beneficiaries.

In summary, we believe SSA's current practices strike an appropriate balance between proper management of trust fund resources and protection of beneficiaries so that they will not be deprived of the Social Security benefits on which they depend for ordinary and necessary living expenses.

Section 3: Demonstration Projects Relating to Accountability for Telephone Service Center (TSC) Communications

Section 3 of H.R. 5250 would require the Secretary of Health and Human Services to conduct demonstration projects to test the feasibility of furnishing people who call TSCs with a written record of the telephone communication.

Training and service observation are the two key components of our current efforts to assure that we furnish people with accurate and complete information about Social Security. Let me describe our procedures in this area.

Our interviewers in local offices and TSCs must possess in-depth knowledge about the programs we administer. Before an employee begins giving information to the public, he must first successfully complete formal and intensive training. For example, the new employees who will be assigned to the National Teleservice Center in Birmingham, Alabama, which opens for business next month, must complete 7 weeks of classroom training.

A formal training course is only the beginning, however. The new trainee is also given 4 to 6 weeks of on-the-job training coupled with additional formal classroom instruction. Once on the job, the trainee is monitored by a seasoned veteran who provides assistance and additional training. The trainee's interviews are observed carefully to make sure he understands the material and, more important, to make sure that customers are given accurate information. But training is not just for new employees; SSA offices set aside part of each day during which new procedures are reviewed or refresher training is given.

Service Observation

Service observation is another important element of assuring that we deliver quality service. Currently, supervisors in the TSCs observe their employees' interviews to assure that accurate information is given to the public. New interviewers are observed most frequently, but even interviews conducted by the most seasoned veterans are observed regularly.

For the TSC which will respond to 800 number calls, we plan to use a somewhat different approach for assessing our interviewers' accuracy. We will conduct at least one survey to determine the frequency with which typical questions about Social

Security are answered correctly. After we have the results of this survey, we will determine the need for this kind of observation--as well as additional training--on an ongoing basis.

Systems Improvements

Besides training and service observations, we have also introduced systems improvements that have enabled all of our employees who deal with the public, and especially our teleservice representatives (TSRs), to provide improved service. Each TSR now has an individual computer terminal for use while conducting interviews. This ready access to online SSA data enables TSRs to furnish prompt and accurate responses to questions from the public. For example:

- The TSRs now have interviewing screens that enable them to enter data while conducting the interview. The new data is then checked against SSA's online data bases, so that errors can be detected and corrected on the spot.
- The new terminals give the TSRs immediate access to all of SSA's major data bases so that questions can be answered immediately. For example, TSRs can now answer a caller's questions about the status of any claim, regardless of where the claim was filed. Previously, questions about the status of a claim could be answered only by the staff assigned to the office in which the claim was filed.
- The TSRs can use the new terminals to schedule an interview in any office in the Nation, and to establish a systems record of a caller's intention to file an application.
- Finally, new data bases enable TSRs to give an immediate response to questions concerning Social Security numbers and individual beneficiary payment histories, for example, rather than referring these questions to another office for resolution or trying to answer the questions based on the hypothetical situation described by a caller.

In summary, we believe that our training efforts, our service observations, and our recent systems improvements give our employees the tools they need to provide accurate and prompt service. For this reason we think that the demonstration projects proposed in section 3 of this bill are not needed. The notice requirements proposed in this section would be burdensome and costly to implement, even in the limited context of a demonstration project. Moreover, developing the necessary systems support for these projects could delay other service improvements we are planning to implement.

Section 4: Availability and Correction of Earnings Record Information

Section 4 of the bill would require SSA to give each applicant for Social Security benefits a statement of the worker's earnings.

Among Commissioner Hardy's highest priorities is giving workers information about their Social Security earnings and assuring that their earnings records are correct so that their benefits will reflect all of their earnings. SSA has already implemented two major initiatives which will go a long way toward achieving these objectives.

First, the new PEBES, which I mentioned at the outset, is a major effort to encourage employees to check their earnings records to make sure they are accurate and complete.

We have always encouraged workers to check on the status of their earnings records, usually at 3-year intervals, so that they can request any needed corrections within the general statutory limit of 3 years, 3 months, and 15 days after the close of the year in which the earnings were received. The new statement contains a year-by-year display of a worker's earnings from 1951 through the most recent year. This detailed information will allow a worker to make sure that his earnings record is complete so that his future benefits will be based on all his covered earnings. This is a great improvement over the old statement which showed only how much was recorded on workers' earnings records in each of the most recent 3 years and showed an aggregate sum for all previous years. (The new statement will also provide workers with comprehensive benefit estimates which will help people to do their own financial planning.)

The second major initiative, which I also mentioned earlier, is to improve the way SSA and IRS reconcile discrepancies in employer reports of earnings to the two agencies.

The new Memorandum of Understanding (MOU) that was agreed to by SSA and IRS in July provides a firm foundation for more timely and efficient reconciliation of earnings discrepancies. Since Norman Goldstein, SSA's Chief Financial Officer, testified about the details of the new MOU before this subcommittee on August 9, I will not repeat all the details of this initiative.

Let me just summarize by saying that the steps we have taken with regard to wage reconciliation should improve public confidence that the Social Security benefits they receive will reflect all of their covered earnings. Under the MOU we have concluded with IRS, we are confident that:

- the reconciliation cases for 1978-1983 will be done by March 1989, and we will be current through tax year 1986 by 1990;
- there will be fewer employer discrepancies in the future because of the numerous improvements we are making; and
- discrepancies in earnings records will be corrected in an accurate and timely manner.

I believe that these two initiatives generally fulfill the objective of section 4 of the bill to assure the accuracy of earnings records. However, we are currently developing a new feature of our Modernized Claims System that will automatically print out the year-by-year earnings totals when a worker applies for Social Security benefits.

Time Limitation For Correcting Earnings Records

Section 4 also would provide that, if an applicant can establish by means of Federal tax return information or reliable employer documents that the earnings record is inaccurate, it could be corrected regardless of whether the time limitation for correction had expired.

Present law allows a time limit of 3 years, 3 months, and 15 days. However, even if this time limit has expired, an earnings record can still be revised if certain conditions are met. For example, a record can be revised at any time to include missing wages if the employer failed to file a wage report or omitted the worker from a wage report.

Because employers are not required to keep records of employee wages after 4 years and because of the difficulty of evaluating evidence of earnings for many years in the past, a longer time limit may not be workable. The PEBES initiative and the MOU for resolving earnings discrepancies will both be effective in assuring that errors in earnings records will be identified and corrected within the statutory time limit.

Section 5: Standards Applicable In Determinations of Good Faith, Fault, Etc.

Section 5 of the bill would generally require SSA to take into account any physical, mental, educational, vocational, or linguistic limitations an individual might have when making determinations where the individual's intent is material to his entitlement to benefits, for example, whether he acted in good faith.

. We fully recognize that an individual's limitations can interfere with effective communication with him. Communication problems can, in turn, adversely affect a person's right to receive the benefits which he is due or deprive him of protection that the law affords him. Thus, regardless of the specific Social Security issue involved, our policies concerning contacts with the public are designed to ensure that any communication barriers are dealt with effectively.

We conduct Social Security business on a face-to-face basis if the person prefers, if there is an indication that a person has difficulty in communicating or comprehending information, if the discussion involves sensitive or complex matters, or if a person appears to be suffering from mental illness or retardation. In addition, we arrange for foreign language interpreters for non-English speaking people and sign language interpreters for hearing-impaired people, when necessary. Finally, upon request we send blind people certain notices about their entitlement in Braille.

We believe SSA's policies are already responsive to the special needs of people who have limitations of the type described in section 5 of the bill.

Section 6: Assistance to the Homeless

Section 6 of the bill would require SSA to establish programs for the purpose of identifying homeless individuals who may be eligible for Social Security or Supplemental Security Income (SSI) benefits and to assist them in applying for these benefits. The provision also would require annual reports to the Congress on the status and accomplishments of these programs.

We believe that effective measures are already in place. SSA already has undertaken special initiatives to identify and assist the homeless in obtaining Social Security or SSI benefits for which they may be eligible. Some of them are: regular visits to shelters and soup kitchens in many cities; developing programs, in conjunction with other agencies, to actively seek out homeless people and maintain contact with them during the processing of claims; and working closely with local shelters and advocates to help SSA serve the needs and protect the rights of the homeless by providing representative payees where needed, and working out check delivery problems.

In addition, with respect to reporting requirements, the Stewart B. McKinney Homeless Assistance Act of 1987 (P.L. 100-77) established in the executive branch an independent Interagency Council on the Homeless. The act mandates a report annually to the Congress by the Interagency Council as well as separate annual reports from each agency represented on the Council. The first HHS report, which was submitted to the Council on October 19, 1987, for transmission to the Congress, described the HHS programs that are designed to assist homeless individuals, discussed impediments to the use by homeless individuals of such programs, and examined efforts made by HHS to increase the opportunities for the homeless to obtain shelter, food, and supportive services.

Section 7: Notice Requirements

Section 7 of this bill would require that notices be written in "clear and simple" language and contain the name and telephone number of a responsible person to contact regarding the notice.

Improving the clarity of our notices has been an important priority of Commissioner Hardy throughout her tenure. Each year, SSA issues approximately one-quarter billion notices and letters containing important information about Social Security. We are making significant progress toward our goal of assuring that all of our notices are clear and understandable.

To begin with, we have established standards for writing notices to assure that all notices are clear and easy to read. These standards call for notices to be written in plain English, use short sentences, avoid Agency jargon, and avoid unfamiliar or uncommon words. Since the inception of this project 5 years ago, most of our notices have undergone revisions to make them easier to read and understand.

As a result of this project, we have improved a tremendous number of notices, over 130 million so far, either by rewriting them entirely, or by improving their layout, design, and typography. These improvements were massive in scope, requiring us to completely replace our printers and all of our mailroom equipment. Where before our machines were cumbersome and obsolete, we now have state-of-the-art laser printers and fully automated computerized mail sorting equipment. To make sure that our new notices were easier for people to understand, we went to a sample of beneficiaries to find out what they thought about the new notices. For our efforts, we received many valuable suggestions on how we could improve our product.

Commissioner Hardy also established a permanent staff within SSA that coordinates all notice-related activities, so that there is a centralized point responsible for assuring that notices meet established standards. Customer satisfaction surveys conducted by the General Accounting Office and the Inspector General (IG) of the Department of Health and Human Services show that our efforts to improve notices have been successful. The most recent survey conducted by the IG showed that 76 percent of the respondents said that the notices they received from Social Security were generally easy or very easy to read. By comparison, 67 percent of respondents rated notices as easy to read in a survey conducted in 1984.

We have also improved our automated notices by placing the address and telephone number of a nearby office in most notices. Notices prepared in local Social Security offices also include the name and telephone number of the local representative in that office who can answer any questions about the notice.

There is wide agreement in and outside SSA that tremendous strides have been made in improving SSA notices in recent years. We believe we have addressed the concerns of the provisions in H.R. 5250.

Service to Those Who Speak Foreign Languages

Section 7 would also require that notices be written in both English and the native language of recipients, when a substantial number of recipients in an area do not understand English.

Helping those who do not speak English is not a new role for SSA. For 50 years, this Agency has been providing service to people from practically every country in the world, many of whom are not fluent in English. This service includes communicating successfully both in interviewing and in explaining or translating Agency notices. Our experience over the years has shown that the most effective way to provide service to those who do not speak English is to hire bilingual employees when possible in offices that serve large groups of people who speak another language. We also work closely with English-speaking members of the beneficiaries' families and friends, and arrange with local support agencies to have bilingual speakers available who can assist in interviews whenever needed. The result has been a cooperative endeavor to assure language is no barrier to high-quality service.

Since the need for interpreters and translators varies from office to office, arrangements for bilingual services have been made by local Social Security offices, which identify the needs of areas they serve and then develop solutions that work. Perhaps these activities can best be described with an example. In Indianapolis, Indiana, there is a community of immigrants from the Soviet Union. Many of these immigrants have been sponsored for admission to the United States by the Indianapolis Jewish Community Center. By working with the community center, the Indianapolis District Office has been able to assure that interpreters are available to bridge the language barrier and to assure that these Russian-speaking people are served by SSA, even though no one in the Indianapolis office is fluent in the Russian language.

We have placed bilingual Hispanic interviewers in offices that serve areas where Hispanic Americans tend to be concentrated. For example, more than 35 percent of the interviewers in the offices that serve the southern part of Florida speak both Spanish and English. Similarly, about a quarter of the interviewers in the Los Angeles, California area offices speak Spanish. And in our teleservice centers located in areas with large Hispanic populations, over 150 interviewers speak Spanish.

Because many recent immigrants are Hispanic Americans, we have focused additional resources to assure that certain forms and notices are available in both English and Spanish language editions. For example, all SSI notices produced by our headquarters computer systems are available, when the recipient requests it, in both English and Spanish. In certain Social Security cases, a Spanish language cover letter can be included, upon request, that alerts the beneficiary that the enclosed English language notice discusses important information and that, if necessary, the letter should be taken to a Social Security office for an explanation. The application form for a Social Security number is available in Spanish, and most of our public information pamphlets are also available in both English and Spanish language editions.

We believe we have a good record in responding to the needs of those who do not speak English, and in doing so in a manner that is effective and that draws on available community resources. The provision in section 7 of this bill that would require SSA to issue foreign language notices would be costly and would duplicate or replace effective and efficient processes that have worked well over the years.

Notices to Blind Title II Beneficiaries

Section 7 would also require SSA to present beneficiaries who are blind with several options concerning notices of decisions that affect their benefits.

SSA works with blind beneficiaries to assure that they have the assistance they need--whether from friends, relatives, or community-based volunteer organizations--to enable them to understand the notices we send to them. In addition, we have procedures for sending a second copy of a person's notices to a sighted friend or relative. Finally, we will send beneficiary notices in Braille if we are asked to do so.

For these reasons, we think the provision requiring us to establish additional notice procedures for blind beneficiaries is unnecessary.

Section 8: Representation of Claimants

Section 8 of the bill would require SSA to maintain a current record of a claimant's representative on our electronic information retrieval system. In addition, our notice to claimants of an adverse determination would have to include information about the availability of attorneys to represent claimants, about local bar association referral services, and about local legal services offices which provide free legal services to qualifying individuals.

We are installing a new electronic tracking system in our hearing offices, and the system will record the identity of a claimant's current representative. Since the great majority of claimants who are represented are first represented at the hearing level, we are largely achieving the objective of this proposal. In addition, we will study the feasibility of recording data relating to a claimant's representative on an electronic system available to all of our field offices.

In regard to the provision requiring notices about the availability of attorneys, I would like to point out that our existing procedures already provide claimants ample information about their right to be represented and about referral services as necessary.

Currently, we include a copy of our pamphlet, "Your Right to Question the Decision Made on your Social Security Claim," with all notices of adverse determinations which are sent to claimants. This pamphlet explains to the claimant the right to be represented by a qualified person of his choice in dealing with SSA and advises the claimant to contact the local Social Security office if he wants additional information about representation. Our field offices will help claimants if they have trouble finding a representative or cannot afford one. All our field offices maintain up-to-date lists of local legal referral services.

Also, our notices to beneficiaries telling them that disability benefits will end because of medical recovery include the information that there are groups, some of which provide free legal services to qualified individuals, which can help them with their appeals, and to ask us if they want the names of those groups. We will consider whether this information should be added to all our notices of adverse determinations.

In addition, all our hearing offices stress to unrepresented claimants that they have a right to be represented. Like our field offices, the hearing offices maintain and provide referral lists to claimants, upon request. Further, at the beginning of each hearing, the presiding administrative law judge makes sure that any unrepresented claimant understands the right to be represented, and will postpone the hearing if the claimant decides to seek representation.

I would also like to mention that the IG, Department of Health and Human Services, recently conducted, at SSA's request, an investigation to determine whether claimants appealing unfavorable Social Security determinations have problems in obtaining access to attorneys. In an August 1988 report, "Access to Attorneys for Social Security Claimants," the IG reported that his investigation showed that the vast majority of the claimants who request hearings have no difficulty in obtaining attorneys to represent them, and that lawyer referral agencies have not noticed any decrease in the number of attorneys handling Social Security cases.

Section 9: Applicability of Administrative Res Judicata; Related Notice Requirements

Section 9 of the bill would provide that if a claimant for Social Security or SSI benefits did not timely appeal an adverse determination but instead filed a new application for benefits, SSA could not deny the new application on the basis that res judicata applied because the claimant did not timely appeal the earlier determination, if the claimant was misled by SSA in deciding not to appeal. (Under the doctrine of res judicata, which is followed by the Federal courts and administrative agencies, including SSA, a claim is denied if it involves the same facts and same issues as a prior claim which was denied and was not timely appealed.) The claimant would have to show that he relied upon incorrect, incomplete, or misleading information provided by a representative of SSA. The provision would also require SSA to include in any notice of an adverse determination clear and specific language about the effect a claimant's choice to reapply for benefits, rather than to appeal an adverse determination, would have on possible entitlement to benefits.

This provision is not necessary. First, I would like to point out that in many cases, because of our reopening rules, a claimant may not lose any benefits by filing a new application rather than filing an appeal on the unfavorable determination. A determination may be reopened and revised under certain circumstances which are specified in our regulations. For example, a determination on a Social Security claim may be reopened and revised within 12 months of the date of the notice of the initial determination for any reason, and within 4 years if there is good cause, e.g., new and material evidence is furnished.

Second, we are already reexamining our notices to make sure they clearly explain the possible consequences of a claimant failing to appeal an adverse determination and, instead, filing a new application for benefits. We will take whatever actions are needed to make sure that all our field personnel understand those consequences and can explain them to claimants.

CONCLUSION

As I have outlined today, we have made substantial improvements in the quality, availability, and timeliness of our service at the same time we have reduced staffing and have been able to increase client satisfaction with SSA service.

We know there is always room for improvement, and we will closely monitor our performance. In particular, we would be pleased to keep you informed of our initiatives which relate to the objectives of H.R. 5250. However, as I have stated, we would generally oppose the enactment of statutory provisions which spell out detailed administrative procedures.

Mr. MOODY. On the last point, do you oppose legislation that doesn't spell out detailed administrative procedures, but simply requires these overall goals, the very goals you yourself are espousing.

Mr. CAROZZA. We agree generally, I think, with H.R. 5250 in terms of the goals, but oppose laws that mandate very detailed administrative practices.

Mr. MOODY. If H.R. 5250 does not try to get into minute detail would you still oppose it?

Mr. CAROZZA. We would have to see the language, but we agree with the general objectives you have expressed.

Mr. MOODY. It is very important that we communicate with everybody in the room. Maybe we can go over some of the provisions as they don't all have your prepared statement. Give us a one or two-sentence reaction to each of these items, if you would, in H.R. 5250.

Mr. CAROZZA. OK.

Mr. MOODY. Overpayments. In situations where rapid recoupment of overpayment with hardship for Social Security beneficiary, SSA would be required to establish a gradual repayment system.

Do you want to comment briefly on that item.

Mr. CAROZZA. Mr. Moody, we believe we already have something like that in practice. Although we ask people to repay the overpayments immediately, we do have provision for them to repay them overtime.

Seventy-five percent of the people who have benefits withheld to recover overpayments arrange for partial withholding. Our claims representatives who look at repayment schedules have very broad discretion.

Mr. MOODY. Do you feel the current arrangements are adequate in this area?

Mr. CAROZZA. Yes, sir, we do.

Mr. MOODY. OK. Teleservice demonstration projects; they would be carried out in SSA centers to test the feasibility of providing written notice to all callers of the date and time of their call, the employee with whom they spoke, and the information summarized on which information or advice they were provided.

Do you want to comment on that?

Mr. CAROZZA. I will address that in two parts. In general, we are trying to improve the training of all our teleservice representatives to make sure they always give out accurate and good information. We think that we will be very successful with that. The other point I would like to make is that even with a limited demonstration project, this would be very difficult and expensive for us to implement.

Mr. MOODY. Have you costed it out, what would it cost?

Mr. CAROZZA. We don't have total costs for that, but we could look at one small part of it. We know how many inquiries we get in the teleservice centers. The postage alone on mailing out some kind of a notice would be $6 million or so per year. That doesn't take into account—we would have to have some kind of an automated system so that doesn't involve any of the administrative costs or the personnel costs to the agency.

Mr. MOODY. Mr. Levin, do you want to ask a question on this point?

Mr. LEVIN. Yes, if I might break in here, one of the complaints that we receive most often is that there is a discrepancy between what the SSA representative says they said and what the beneficiary understood. So I would hope you would not be too rigid on this. I think we all know of the gap of understanding that can occur, and perhaps in each and every instance, a written confirmation isn't useful or necessary.

But I would think in certain types of cases, it would be. With our modern computers, it is relatively easy, I think, to set up a demonstration so that the person in SSA sends to the person on the other end of the line some kind of communication.

I think the important thing for us to do is to put ourselves on the other end of the line and assume the level of information of the person on the other end.

And also, I think to say that training is enough is not responsive. The best way to test the adequacy of training is to have a demonstration project where written confirmation is sent out and see if both people are on the same wave length.

Mr. CAROZZA. I would like to make a couple of comments. I know Mr. Doggette would also. In addition to the training, we are going to be closely monitoring the performance of all of these telephone representatives. We are going to go out and look at the questions that are asked most frequently and make sure that our training is very intensive in those areas.

We are going to monitor calls, even of seasoned representatives, to make sure they are giving out accurate information. Quite frankly, the Social Security law is very complex, even for those of us who work with it every day. I think we are mindful of the fact that it can be very confusing to our representatives.

I think Mr. Doggette has a comment also.

Mr. DOGGETTE. If I may, thank you very much. We share your concern and we have been doing all of the things that Mr. Carozza has mentioned. I would like to add just a few pieces of information.

In our 34 existing telephone answering centers today, we get over 25 million telephone calls a year. Most of those calls are calls that relate to the hours of business, where your office is located, what do I need to do to file a claim, do I need to bring something, and calls that can be handled rather easily and there is very little chance of any disadvantage to the claimant.

Some of those calls refer to, I would like to file a claim. In those cases we are going to be improving the way we handle them with our new 800 number. We will be able to, on the computer, establish an electronic record that we will maintain up to 2 weeks, and we will send that electronic record to the appropriate servicing field office, electronically.

We will either make an appointment for that person to file a claim or send that electronic record to the servicing office as what we call a claims lead, which means we have established a protective filing date for that person. Should they not contact us, we will contact them to verify that they in fact do not want to follow through on filing a claim.

If they do, we have established a protective filing date in the system. Today, even before that new system goes into operation, and it will go into operation the first part of next month, as we bring up the 800 number service. Even today we spend a lot of time training our telephone answerers to make certain they protect the interest and rights of the people who call in by filling out a piece of paper to provide a protective filing date and to arrange an appointment either by telephone or in person in the field office, to file any claims for which they may be eligible.

Mr. **Levin**. I think that is progress. I would suggest that we learn from the experience of the IRS. I think you know what we found out—or at least what allegedly was discovered—that misinformation was given in about a third of the cases. I am not talking about the routine cases. They could be eliminated from the demonstration project.

I think you ought to consider some kind of a written communication followup to the beneficiary in certain kinds of cases. I would think that is the best way to test whether both people have understood each other.

We have to go and vote.

Mr. **Moody**. Let me interrupt. I see the member from Tennessee has arrived—Mr. Clement. Why don't we all three go vote and come right back.

[A short recess was taken.]

Mr. **Moody**. We will resume the hearing. If the people will take their seats.

Mr. Carozza, we were just in the process of discussing the second item. Teleservice demonstration projects. You were explaining that in fact you have a system now you feel will handle the major issue here by providing a written record when the person calls to require a new claim. Is that correct?

Mr. **Carozza**. Yes; in general.

Mr. **Moody**. You make a point that many of the calls are routine—where is your office—and it would be a mistake to send written followup on that. That would not be the intention here, I think.

Mr. Levin was making the point that on the items where people ask for substantive information over the phone—and we know from other agencies, not yours—that this typically, or statistically is about 25 or 35 percent either misunderstood or misstated, or what have you, because phone communications are never perfect. It would be helpful in those cases to have some kind of written followup to remove misimpressions or misinformation.

So that is where we were when we broke for voting. Do you want to comment further?

Mr. **Carozza**. Mr. Moody, what we should do, as we go through our procedures for examining the kinds of questions that were being asked, we should also look at the quality of information and if there are particular areas where people are having trouble, where we see there is high potential for misinformation, to consider doing something in that area.

Mr. **Moody**. The written followup might be extended beyond a request for a new claim to particular areas that seem to be prone for misunderstanding or misinformation.

Mr. **Carozza**. That would be good for us.

Mr. MOODY. You wouldn't necessarily cut it off at the new application point. Whenever they ask about X, Y, or Z, let's also send a followup. You are open to that?

Mr. CAROZZA. We are open to that.

Mr. LEVIN. If I might quickly ask, on the first point about the 75 percent in your testimony on page 3. In the case of three quarters of the beneficiaries having their benefits withheld, arrangements are made to have only part of their benefits withheld. Is it your feeling that as to the other quarter arrangements are not in order? Are you satisfied that the system is working fairly and effectively?

Mr. CAROZZA. Generally we are, sir. Yes sir. Seventy-five percent have a spread-out schedule, but 100 percent have the opportunity to spread those payments out over an extended period of time. We are offering everybody the opportunity.

Mr. LEVIN. What is happening, do you think, in the case of the other quarter? How many, by the way, how many people would we be talking about in a year?

Mr. CAROZZA. I don't know if we have that information with us. Do you?

Mr. DOGGETTE. We will have to supply that for the record.

[The information follows:]

TITLE II OVERPAYMENTS

During the period January 1988 through August 1988, 607,202 new title II overpayments were established. However, some of these overpayments have been, or will be, waived and others have been, or will be, recovered through refunds rather than through benefit withholding. Thus, point-in-time data are the most acurate indicator of the extent to which overpaid beneficiaries are currently taking advantage of the opportunity to have partial withholding of their benefits for overpayment recovery purposes. For August 1988—the most recent month for which data are available—232,407 beneficiaries were subject to withholding of otherwise payable benefits to recover title II overpayments. Of these, 181,514 (78 percent) were in partial withholding status and 50,893 (22 percent) were in full withholding status.

Mr. LEVIN. It is somewhat substantial in numbers. We are not talking about just a few thousand people. Do you think you understand the dynamics of the three-quarters and the one quarter?

Mr. CAROZZA. Actually, Mr. Levin, Commissioner Hardy will be testifying next week on the retirement earnings test, which is one of the principal reasons we have overpayments, and perhaps we could supply you next week with some more detailed information on that point.

Mr. LEVIN. OK.

By the way, Mr. Chairman, there was a statement in our package from Congressman Frenzel. I am not sure if anyone has offered that be placed in the record.

Mr. MOODY. We will be happy to do so, without objection.

Mr. LEVIN. Is that OK? If we could do that, I think it is a helpful statement, and it touches on one of the items that you have just talked about, Mr. Carroza.

[The statement of Mr. Frenzel follows:]

STATEMENT OF HON. BILL FRENZEL

Mr. Chairman, I want to thank you for scheduling today's hearing, which focuses on the quality of services provided by the Social Security Administration. We Republican Members generally have been supportive of reducing the administrative overhead of that agency and moving ahead with the computer modernization process which has facilitated staffing reductions. Still, it is vital that we assure ourselves that workers and beneficiaries are well served during this transition period and in the decades ahead.

I expect that some of today's witnesses will call for even stronger measures than those continued in H.R. 5250, the Social Security Beneficiaries Protection Act. I'm also sure that the Administration may identify areas that will be troublesome to administer or overlap current administrative initiatives. On balance, however, I think it will be apparent that the scope and purpose of the bill deserve committee consideration.

I do feel strongly that consideration of these issues should also include the provisions of a bill that Mr. Crane, Mr. Daub and I have recently introduced, the "Personal Earnings and Benefit Statements Study Authorization Act of 1988," H.R. 5335.

That bill would permit the Social Security Administration to use IRS data so that Social Security could send out unsolicited personalized benefit estimates. In addition, the bill would authorize a pilot study regarding such unsolicited mailings.

This would, I believe, complement section four of H.R. 5250 regarding the availability and correction of earnings records. The pilot study will give us the data we need to determine the value and feasibility of providing such information to workers and beneficiaries.

I do want to compliment the Social Security Administration for the progress that has been made in improving service to the program's beneficiaries. Computer modernization has improved processing times in issuing social security cards, posting earnings, and paying benefits. Just as the new personalized benefit estimates have proven to be effective, I expect the new nationwide, toll-free "800" service to be equally well received.

Mr. Chairman, I look forward to hearing from today's witnesses.

Mr. MOODY. Item H.R. 5250, in brief summary, would be—and I am reading from notes—"the agency would be required to inform all applicants for benefits of its difficulties in accurately crediting earnings to furnish them with the year by year summary of their income and to allow them to correct their earning records after expiration of the current time limits, based on tax returns, or on the reliable employer provided information."

Do you want to comment on that feature of the bill?

Mr. CAROZZA. Yes sir. As I mentioned earlier, I discussed it more fully in my statement for the record. With our new personalized earnings and benefit estimate statement, everybody in the country has the opportunity to write in and get a statement of their earnings and make the corrections. We encourage them to do so.

Mr. MOODY. This is a year by year summary?

Mr. CAROZZA. Yes sir, from 1951, and they have the opportunity at that point. Our difficulty with this provision is a systems difficulty; we agree with the intent—it is in our agency strategic plan to provide everybody with these statements. That is, we can give every applicant that kind of a record but they have to do it through a separate system—the one that we have for our personal earnings and benefit estimate statement. We don't have the systems capability yet, but we are working on it, to hand it to them while they are seated with a claims representative. We will have that.

Mr. DOGGETTE. Next year.

Mr. CAROZZA. Next year we will have that.

Mr. MOODY. Give them a hard copy while they are there?

Mr. CAROZZA. Yes, sir.

Mr. MOODY. What about after the meeting is over, they go home, will one come in the mail shortly under current technology?

Mr. CAROZZA. We can do that, yes, sir.

Mr. Moody. Another item on this feature is to allow them to correct their earnings records after expiration of the current time limits based on tax returns or reliable employer information. What is your comment on that part of the bill?

Mr. Carozza. We have several initiatives in addition to PEBES, where people will have the chance to correct the earnings records. We have developed a memorandum of understanding with the IRS to work off our backlog of wage reconciliation cases and to keep it from occurring in the future. Most of our problems occur because either an employer didn't file a report or filed it but omitted an employee in error, and we can go back and correct those at any point. Those are the bulk of the discrepancies that we have to deal with.

Mr. Moody. So you are going to be able to allow people to go past the time limit if tax records or other reliable employer information is provided, is that correct?

Mr. Carozza. With the improvements we have already made, we don't think that that time frame is any real constraint. As we were preparing for this hearing yesterday, we started to think about this in more detail, and we think we will take more care of these people without getting into that time frame. We would be willing to investigate whether we can go along with a legislative change.

Mr. Moody. Let us know how you feel about that. If you corrected it substantially but there are still individuals for whom this would be a hardship, you would be prepared to be flexible, correct?

Mr. Carozza. Yes, sir.

Mr. Levin. Mr. Chairman, let me just ask this.

Mr. Moody. Yes, sir.

Mr. Levin. We will await your statement of position, and I am not quite sure of the import of your testimony that perhaps you could go along with the legislative mandate. That is a hopeful sign, but let me just be sure what you are saying. Right now there is essentially a statute of limitations, right?

Mr. Carozza. Yes, sir.

Mr. Levin. And it can be waived under certain conditions. The employer is required to maintain records for 4 years?

Mr. Carozza. Yes, sir.

Mr. Levin. If an employee—one of the problems is where the employee wants to go back beyond that period of time and there may not be employer records, but she or he has information that is relevant, that is one of the issues we are talking about, right? And you are going to let us know whether a change in that legislatively would be something SSA could support, right?

Mr. Carozza. Yes.

[The information follows:]

STATUTE OF LIMITATIONS

We are considering whether the statute of limitations regarding correcting earnings records needs to be changed. We will advise the committee of the results of our review as soon as possible.

Mr. Levin. I want you to know, and I think you know from the previous hearing, how grievous we found the status quo. I didn't know the extent of the problem before the hearing. When we sat here and listened to the gap between what people have earned and what they are recorded, and the failure of our Government, their servant, to take steps to bridge that gap, I felt, as someone who basically defends the civil service and Government services, I found that shameful. I was ashamed.

I also felt rather badly for the people who sat in your seats, because I don't think they were mainly to blame. In fact, I don't think they even felt that they could defend what they were defending. It seems to me that we have an absolute obligation to make sure that people are not taken by surprise so many years after the fact, that they can't really rectify it.

I don't know how many more months—are both of you civil servants or not? You are and you are not?

Mr. CAROZZA. I am a political appointee.

Mr. LEVIN. I don't know how many more months you will have, but I——

Mr. CAROZZA. I hope many more.

Mr. MOODY. Nothing personal.

Mr. LEVIN. Yes, but use them well, because I think, if I might say so as one who was once in your position, you have an obligation not to implement policy or to create policy in a way that an obviously dedicated civil servant like Mr. Doggette has to come before a committee, because of personal cuts or inattentiveness, or whatever it is, and defend something that he—in this case it is he—knows really is not defensible.

I think in a word, the present situation, in terms of earning records, is totally indefensible. Whether it is $5 billion—the impact—or $3 billion, or whatever it is, it is much too large.

Mr. CAROZZA. Mr. Levin, we know of your concern, and especially this committee's concern, in that area. That is why we are undertaking these projects—to improve that situation.

Mr. LEVIN. Well, be bold, do more than you think may be necessary, because it is unlikely that it will be enough.

Mr. CAROZZA. I understand that, sir.

Mr. LEVIN. With this kind of a problem.

Mr. MOODY. The next item in the bill is a standard for good faith. "Determining whether an individual acted in good faith, Social Security Administration would be required to take into account his or her physical, mental, educational or linguistic limitations."

I know you have the discretion to do that now. We have considerable informal feedback from our districts that that is rarely the case. In fact, many people have mental, physical, educational or linguistic limitations and in fact aren't given a good faith defense for their problems—not filed on time or whatever. Can you respond? Sort of quantify it. One gets a lot of qualitative information of this sort.

Mr. CAROZZA. Our basic response is we don't think a legislative fix is necessary in this area. We certainly feel that we can do more to encourage our people, to take these factors into account. That is our standard policy now, and if they are not doing it, we want to get in and make sure that they are giving them adequate information.

Mr. MOODY. If that is the case, why would you oppose legislative, since this isn't a detailed mandate? This doesn't give detailed instructions. Why would you object to having that on the record so to speak, or having that in the law?

Mr. **Carozza**. Basically because we have that authority now. We believe that a legislative change would be unnecessary. We have a very thick Social Security law already, and thousands and thousands of pages of regulations and program operating instruction to implement that authority. It would just be, we think, unnecessary.

Mr. **Moody**. Unnecessary, but not harmful, right? Do you see any harm in it?

Mr. **Carozza**. I think that we should be encouraged to do everything that we can in that area, but we think it is unnecessary.

Mr. **Moody**. So you have no specific objection, it is just not a necessary addition to the law?

Mr. **Carozza**. Yes, sir, that is correct.

Mr. **Moody**. But it may be important for Congress to express itself, as a matter of public policy, that this be the case. Knowing that future administrations might not be as diligent as the preceding one to do so.

Number 5, homeless outreach. Social Security Administration would be required to establish a program to outreach to the homeless. We have stories of checks not reaching people who are actually eligible because they are street people. What do you do now to remedy that problem?

Mr. **Carozza**. Well, we have several things going on. Mostly it is done at the local level, where our local managers and employees work closely with the local shelters and other agencies to make sure that we locate people who are potentially eligible and find out if they are eligible for benefits. Once they are found eligible for benefits, we work with them to make sure that they have a place to get them. It could be in the district office or through a representative payee.

Mr. **Moody**. You have an outreach program now?

Mr. **Carozza**. Yes, sir.

Mr. **Moody**. Do you consider it a good one, an adequate, proactive one? Can you describe it to us? Qualify it and quantify it?

Mr. **Carozza**. We can always do better. We are always trying. We believe it is adequate. I think the benefit of doing this at the local level is that the managers in those areas know the particular problems and can respond best to them.

Mr. **Moody**. You don't have a specific program—or do you have a specific program—where people are designated to do this? Or is this—Mr. Doggette.

Mr. **Doggette**. We started our activities in this area several years ago, Mr. Moody. We do not have individuals designated as such, but we have individuals whose jobs include this responsibility in all of our field offices. We work with the local community agencies, the appropriate state and local government agencies.

We put contact stations in homeless centers.

We send our representatives out to areas where people are being discharged from institutions who may not have an address.

We sometimes send our checks to the local district office to be picked up by the homeless.

We try to keep a very strong liaison with the organizations that deal in this area so we can provide the services. We have been doing that for a number of years. We are still doing it.

I think there are ways that we can probably strengthen that more, but we are certainly in full agreement with and support the concept of a program of outreach to the homeless.

Mr. **Moody**. So you do have a program to do it now?

Mr. **Doggette**. Yes, sir.

Mr. **Moody**. Is the program a written program so that you could send us a copy of the instructions?

Mr. **Doggette**. We sent out a series of initiatives 3, 4 years ago and we got back information from all of our offices on how they were implementing these initiatives and we continue to get periodic feedback and yes, we can send you information.

Mr. **Moody**. I would appreciate if you would share that with the subcommittee.

[The information follows:]

Social Security Administration (SSA)

Outreach Activities

SSA has initiated a number of efforts to assist the homeless. SSA local offices have established various special procedures to meet the problems faced by the homeless in obtaining any Social Security or Supplemental Security Income benefits for which they are eligible. Some examples:

- Regional and local directories of services for the homeless have been published and are distributed to members of the public who request them (usually providers of services to or advocates for the homeless).

- Local managers and employees work closely with local shelters and advocates to help SSA serve the needs and protect the rights of the homeless by:

  - assuring representation in the claims process,

  - providing representative payees where needed, and

  - working out check delivery problems.

- Contact stations have been established in shelters in many cities. In cities with large homeless populations special procedures have been established to expedite the disability decision making process.

- Local programs have been developed, in conjunction with other agencies, to actively seek out homeless people and maintain contact with them during the processing of claims.

- Prerelease arrangements with local public medical and domiciliary institutions are being strengthened and revised to better identify potential homeless situations. Claims are taken from such patients before their release in order to assure that they have some money upon release to use toward finding housing. SSA is also now required to see that a food stamp application is completed at the same time as an SSI application in these cases.

- SSA offices, in cases where eligibility has been established, can make Social Security or SSI immediate payments in cases where regular payments in 5-10 days would not be fast enough. These payments are made from the offices' petty cash funds.
- SSA is cooperating with the Robert Wood Johnson Foundation in two of its projects for homeless and chronically mentally ill people. Local SSA field offices work with the Foundation's network of medical facilities to improve outreach to homeless people. SSA is serving in an advisory role in the Foundation's project for the chronically mentally ill and works with the grantees in selected cities.
- SSA is cooperating with the Department of Labor (DOL) in its jobs-for-homeless-veterans program. Local SSA representatives are serving on working committees with the DOL and the Veterans' Administration in 10 cities where the program activities are underway.
- SSA also works with several national organizations which serve as advocates for homeless people, to provide materials and information to be disseminated to affiliates, professionals, and consumers. Information from these organizations has also been valuable to SSA in forming policies and procedures.

Social Security Benefit Programs

A fixed address is not required in order to receive Social Security or SSI benefits. Consequently, homeless persons who meet the program requirements may qualify for benefits. The Social Security office can make special arrangements for delivering checks (or making direct deposit payments to an account, if possible) and notices. Checks and notices can be mailed to a shelter or other third party address, or even to the Social Security office, if necessary. In cases where a person is incapable of handling funds--because of an impairment, for example--SSA can appoint a representative payee to receive payments and notices on his or her behalf. A shelter or other organization can serve as the payee, if there are no relatives or friends who can do so.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administrat

14243-14-129

Refer to SDA2

Memorandu

SI-28

Date: EP 7 1984

From: Herbert R. Doggette, Jr.
Deputy Commissioner, Operations

Subject: Operational Plan for Serving the Homeless--ACTION

To: All Regional Commissioners

REPLY REQUESTED BY October 9, 1984

As promised in my memorandum of August 23, 1984, attached is the complete operational plan for the Social Security Administration's (SSA's) outreach efforts to better serve the homeless. It includes the recommendations sent to you previously and also incorporates the additional ideas you suggested. Please consult this plan for any additional items you may not yet have considered in your regional and local initiatives and report on the progress you have made in implementing a complete outreach plan within 30 days of the date of this memorandum.

The report should include the status for each of the 11 items in the attached plan in the same order that they appear in the plan. It should also include another section on additional information, including the reactions of any of the organizations contacted or any community reactions, and the number of contacts received by district managers or other employees serving as contact points.

The Office of Governmental Affairs is continuing to work on public information material highlighting the needs of the homeless and SSA's efforts to assist these individuals. This material will be forwarded to you, when completed, for your use in outreach activities.

I know I can count on your active support of this initiative to ensure that our programs and services are available to the homeless, and I will keep Acting Commissioner McSteen informed of your progress in implementing these comprehensive outreach activities.

HRD
Herbert R. Doggette, Jr.

Attachment

cc:
Mrs. Martha A. McSteen
Mr. Louis D. Enoff
Mr. Marshall S. Mandell
Mr. Nelson J. Sabatini

OPERATIONAL GUIDELINES FOR ASSISTING THE HOMELESS

1. Update information and referral files in all field offices (FO's) regularly and include providers of services to the homeless, such as shelters, soup kitchens, churches, and social agencies.

2. Heighten employee awareness of the special needs of the homeless through provider presentations, group discussions, and circulation of written material discussing their unique circumstances.

3. Establish liaison between FO's and providers of services to the homeless. The purpose of this liaison will be:

   - To ensure that program information is available to provider staff.
   - To acquaint provider staff with SSA operational procedures.
   - To request provider assistance in identifying homeless individuals who may be potentially eligible for benefits.

   Wherever possible this contact should be made in person.

4. Establish outreach procedures in areas with large homeless populations to take claims and conduct postentitlement interviews at the facilities that provide services for the homeless. Where possible, initiate procedures to include DDS examiners, physicians, and social service workers in the offsite claims process.

5. Mail copies of any notices or letters prepared by the FO to a third party contact as well as to the homeless individual, if the homeless person applying for or receiving benefits from SSA provides written consent.

6. Retain SSA-250's for homeless individuals in FO's beyond the 6-month retention period. At the manager's discretion, records for the long-term homeless or those authorizing third party notices may be kept indefinitely.

7. Appoint one district manager in large metropolitan centers as the key contact for community groups coordinating services to the homeless.

8. Establish parallel FO liaison with the local Mayor's office, (or other appropriate level of local government), and communicate SSA's commitment to reaching the homeless who may be potentially eligible for benefits.

9. Obtain copies of city and State directories of services available for the homeless. Supplement these publications as needed and prepare a comprehensive directory of all services currently offerred to the homeless. Distribute these regional directories to FO's, teleservice centers, and other agencies involved with meeting the needs of the homeless.

10. Designate a regional "Homeless" contact person in each region to be available to other agencies who assist the homeless, share new ideas or approaches for reaching the homeless, and coordinate FO activities in this area.

11. Include an Area Director's (AD's) visit agenda item to discuss the actions taken to respond to the needs of the homeless in the AD's next scheduled visit to each office in his/her area.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administration

Refer to: SEL

Memorandum

Date: OCT 31 1986

From: J. Kenneth McGill
Office of Governmental Affairs

Subject: Quarterly Report on Activities by the Social Security Administration (SSA) Regarding Homeless People

To: Harvey R. Vieth, Chairman
Federal Task Force on the Homeless

During the quarter ending September 30, 1986, SSA's activities on behalf of homeless people were essentially a continuation of the activities described in the attached report on 1985 activities. Several recent items of interest are:

- We have implemented an expanded outreach plan for the Supplemental Security Income (SSI) Program targeted to groups of potential eligibles, such as the homeless. New public information materials have been developed and distributed to national and local organizations in the public and private sectors who work with homeless people. These organizations are able to help identify and refer possible SSI eligibles to our local Social Security offices.
- We are cooperating with the Department of Labor in its Jobs for Homeless Veterans Program. Local SSA representatives are serving on working committees with DOL and the VA in 10 cities where the program is getting started.
- We have also cooperated with the Robert Wood Johnson Foundation in two of its projects for homeless and chronically mentally ill people. Local Social Security offices have worked with the Foundation's network of medical facilities to improve outreach to homeless people. We have also served an advisory role in the Foundation's upcoming project for chronically mentally ill people, and are currently exploring ways to work with the grantees in the nine selected cities.
- The Congress passed, as an amendment to the Drug Control Bill, provisions which would require:

- SSI payments to be made even if an eligible person does not have a fixed address.
- SSI payments and food stamps to be processed from a single application for people being released from public institutions under an SSI pre-release program.

These two provisions will probably not have major impact on the SSI program or potential eligibles, although a complete analysis has not yet been done.

Enclosure

Report on 1985 Activities by the Social Security Administration (SSA) on Behalf of Homeless People

I. Background

Although homeless people must meet the same eligibility requirements as any other applicant for Social Security or Supplemental Security Income (SSI) benefits, SSA recognizes that they have special problems in establishing eligibility. The major problems that SSA's initiatives are designed to address are:

- Homeless people are difficult to locate and contact.
- They have limited exposure to traditional sources of information.
- They don't know how, or are reluctant, to file, pursue, or appeal a claim for benefits.

All SSA activities on behalf of the homeless people are conducted as part of the commitment flowing from participation on the Federal Interagency Task Force on the Homeless (FITFH), chaired by Dr. Harvey Vieth. Acting Commissioner Martha McSteen, former Secretary Margaret Heckler, and Secretary Otis Bowen have reinforced commitment with their actions and leadership.

II. Major Initiatives

A. Under the direction of central office, SSA field offices have established various outreach programs and procedures in each region. Some examples:

- Regional and local directories of services for the homeless have been published and distributed.
- Local managers and employees work closely with local shelters and advocates to serve the needs of the homeless.
- "Contact stations" have been established in shelters in many cities. This approach has been particularly successful in New York, Los Angeles, Chicago and Washington, DC.

- Fund-raising events have been coordinated with other segments of the community. In Seattle, a major effort was launched with the Seattle Mariners baseball team.

- Local programs have been developed, in conjunction with other agencies, to actively seek out homeless people and maintain contact with them during the processing of Social Security and SSI claims.

- Prerelease arrangements with some local medical and domiciliary institutions have been revised to better identify potential homeless situations. Claims are taken from such patients before their release.

- Numerous contacts with providers of services have given SSA employees a better understanding of their needs, problems and resources. The contacts also have given the providers a fuller appreciation of SSA's role and resources.

B. The External Liaison Staff (ELS) in the Office of Governmental Affairs represents SSA on FITFH. ELS has provided the task force information to provide a better understanding of SSA's organization, programs and policies. ELS has met with representatives of the National Mental Health Association, International Association of Psycho-Social Rehabilitation Services, the National Alliance for the Mentally Ill and other organizations to assist them in preparing information tailored to their affiliates and members. ELS also has given presentations at a number of forums and conferences sponsored by organizations concerned with the homeless--providing information about SSA's policies and operations and making the organizations' interests and concerns known so that they can be considered during SSA's decision-making process.

C. Beginning October 1, 1985, Social Security offices started using a new procedure to make immediate payments in extra-sensitive Social Security and SSI cases. "Immediate" usually means while the beneficiary waits, or the next day at the latest. The payments are made from the offices' petty cash fund and are limited to a maximum of $200 or the amount due, whichever is less, per beneficiary in a 30-day period. Any remaining amounts are paid through the normal process on an expedited basis.

To receive an immediate payment, the beneficiary's situation must be such that any further delay in payment would result in deprivation of food and/or shelter or endangerment of health. The person's entitlement to benefits must be verified by the local office. Many homeless people meet these requirements and can be helped with this new procedure.

D. Procedures have been in effect since May 1983 which allow a person to receive SSI payments for 3 months per calendar year while staying a public shelter. Under previous regulations, people living in public shelters for the homeless for a full month were considered residents of public institutions and therefore ineligible for SSI payments for that month. This situation discouraged the homeless from seeking residence in public emergency shelters for fear of losing their SSI payments--often their sole source of income.

E. SSA has made significant efforts to help employees understand the special needs of the homeless. Human interest stories involving volunteer work of SSA employees are published in OASIS magazine, which is distributed to every SSA employee. Articles have been published in the Information Items which is published and distributed to about 5,000 national organizations, as well as employees.

Where possible, the needs and problems of the homeless are highlighted when instructions and procedures are written.

Several transmittals in SSA's Program Operations Manual System (POMS) were designed specifically to emphasize the need to ensure that homeless individuals' rights are protected and to indicate how field offices may assist homeless claimants in pursuing claims. A program circular was distributed to all Social Security offices which highlighted the key POMS instructions that may apply when working with a homeless individual.

The many activities described in this report are the tangible results of work by SSA's employees in keeping the commitment made by Department of Health and Human Services officials to "take that extra step, to make a special effort in extending SSA's helping hand to the homeless...to lead the way among Federal agencies in awareness and action in helping the homeless."

SSA FIELD HOMELESS INITIATIVES

MARCH 1987 UPDATE

The following information resulted from an informal telephone survey of the regional offices by the Field Liaison and Support Staff.

- Boston

    - All field offices (FO's) have maintained a strong information and referral program with the homeless shelters, missions, and other homeless organizations.
    - All FO's have access to a directory of agencies that serve the homeless. They refer people to the appropriate agency which can help them with their specific need.
    - A district manager in one office in Boston is president of a local homeless shelter. A field representative in another office is the treasurer of a shelter.
    - Field representatives in the metropolitan areas in the Region go to the various shelters once a week to take claims and process other inquiries.

- New York

    - As a result of SSA's ongoing homeless initiative, all of the offices in the region are closely associated with the homeless organizations. They have made arrangements to take claims from the homeless who visit or live in the shelters.
    - The New York City (NYC) homeless outreach project continues. On scheduled dates, a claims representative from SSA, an analyst from the New York State Office of Disability Determinations (ODD), a social worker, and physicians and psychiatrists supplied by the NYC Human Resources Administration (HRA) visit seven shelters to take and develop disability claims. To date 1,549 claims have been processed with a 60.2 percent overall allowance rate. For the period April 1984 through February 1987, 84 percent of the claims were allowed. Ten cases were processed in January 1987. All ten cases were allowed.
    - On February 24, a tentative agreement was reached with HRA to extend the project to at least one more shelter. An effective date has not been set.
    - The New Jersey State Department of Human Services contacted SSA for assistance in setting up a pilot program in Jersey City to assist the homeless. An SSA and a Health Department employee visit the homeless centers to take claims and provide other needed services.

o Philadelphia

- All of the offices in the Region have made contact with the various shelters, missions, and other organizations that serve the homeless.
- Information and referral procedures have been worked out with these agencies.
- The prerelease procedures were revised and some offices have been successful in processing claims from mental patients who are scheduled to be discharged from the hospital.
- Training on the SSA/SSI programs was given to shelter employees who work one-on-one with the homeless on a daily basis.
- The district manager in Baltimore is a member of a group overseeing a project to assist homeless Veterans. The objective of the program is to hire two homeless Veterans (at minimum wage) who would be directed to steer fellow homeless Veterans into training programs or directly into jobs. The opinion is that this is a group that has not been homeless long and (if reached in time) is not likely to return to the street. (This is part of a national pilot program being conducted by the Department of Labor. SSA is a participating agency.)

o Atlanta

- The Atlanta District Office (DO) has made arrangements with four homeless shelters to obtain claims. The shelters call the offices on an as needed basis.
- The Atlanta DO also has a liaison with an attorney who is under contract with the homeless organizations to handle SSA related matters.
- A number of managers throughout the Region are involved in voluntary positions in various organizations that serve the homeless.
- Most offices in the Region have continual contact with the homeless organizations.
- The Assistant District Manager in Memphis is a member of the Board of Directors for a homeless agency.

o Chicago

- The Toledo, Ohio, office sends an employee to the Community Center for the Homeless and Destitute to take claims every month. A psychologist from the DDS accompanies SSA to conduct onsite CE's.
- The district manager in Cleveland is on the governing board of the Cleveland Health Care for the Homeless. He submits articles on the SSA/SSI programs for release in the center's monthly newsletter.
- The Ohio State Department of Health hired case managers to work with the mentally ill before they become homeless. SSA trained the case workers on all aspects of the SSA/SSI disability programs. The case managers refer clients to SSA.
- A field representative in one of the Chicago FO's is SSA's representative on the Chicago Coalition for the Homeless.
- The Lakeside Veterans Administration (VA) Hospital provides medical treatment for homeless veterans. SSA has a video tape on SSI/SSA benefits that is regularly played in the VA's waiting room.
- The Detroit FO's have worked out information and referral procedures with the Coalition for Temporary Shelters.
- The Detroit DO conducted training for employees of the Coalition for Community Health Care for the Homeless.
- Prerelease procedures have been set up with the Illinois Department of Mental Health. All FO's in the State are involved in this process. The objective is to reach the patients and help them before they become homeless.

o Dallas

- All offices have an ongoing information and referral program with the various homeless shelters, missions, soup kitchens, and other organizations. On an as needed basis, field representatives travel to the centers to take claims and process nonclaims items.
- The San Antonio FO works closely with the Salvation Army which is the representative payee for a number of homeless SSA/SSI recipients.

- Kansas City

  - All FO's have a close liaison with the homeless shelters, missions, and other organizations which serve the homeless.

  - Field and claims representatives visit shelters in the larger areas in the region to take claims. The shelters also refer people to the SSA offices.

  - The offices in Kansas City also distribute pamphlets "Do You Need Shelter? Call the Homeless Hotline."

- Denver

  - The Denver FO's are directly involved with the Colorado Coalition for the Homeless.

  - Information and referral procedures have been worked out with food banks, missions, shelters, and other organizations throughout the region.

  - Field representatives go to the shelters in the larger metropolitan areas in the region to take claims on an as needed basis.

- San Francisco

  - All offices have worked out information and referral procedures with the homeless organizations.

  - The Los Angeles DO works closely with:

    1. The Skid Row Mental Health Center which works with the homeless;

    2. The Weingarten Center (a halfway house) which serves the needs of the homeless; and,

    3. The Los Angeles Police Department which refers homeless people when necessary.

  - A claims representative works full-time with the Public Guardian's Office in Los Angeles. Duties include taking claims, processing representative payee actions, and handling other nonclaims items.

  - A district manager in the Bay area is a member of the board of the Bay Area Community Service, the Emergency Service Network and the Elderly Abuse Prevention Network. These agencies provide services to the homeless.

- The district manager in San Francisco is on the mayor's Homeless Task Force which meets weekly.

o Seattle

- The FO's work closely with the homeless advocacy groups, shelters, missions, and other organizations to provide service to the homeless.

- They have worked out information and referral procedures with the agencies. Most offices have directories that give information on the services provided by the homeless organizations.

- Outstationing of SSA employees to the shelters was not productive. Instead, the shelters call SSA when services are required.

- Some employees are members of committees or task forces that serve the needs of the homeless.

Prepared by: FLSS/OSG
Date: March 1987

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DISC: 1: TRACK: A-22 - 26
SAY:BDillard:tj 03/05/87 REVISED
SAY:BDillard:tj 03/06/87 REVISED

Mr. **Levin**. Let me just ask you at this point, is it mandatory each area have this program?

Mr. **Doggette**. Yes. There is no discretion on the part of a local office not to engage in the activities and initiatives that we cite.

Mr. **Levin**. It would be useful if you would send us that.

Mr. **Moody**. Next item. This one I can tell you personally is very important in my district. My case workers in Social Security told me this is one of the top things that they need. What they hear from the people they work with has to do with notices. The name, address and telephone numbers of a contract person, someone at Social Security Administration would be required in all agency notices and correspondence. That is number 1.

We have had complaints they get notice from somewhere in America that they have to do something. They don't know who to talk to. They don't know where to go, who to reach, and it would be a fairly simple matter for the agency to put that on a printed notice.

Next subcomponent would be, furthermore, all notices would have to be written in clear and simple language. There is a plea for simple language.

Finally, the agency would have to provide special notices by telephone or registered mail to blind individuals as currently is required under supplemental social security income. SSI does that already. That is a third item of this, under this rubric of notice, starting with some phone number or some person, and a phone number to contact in case of notice, clear, simple language, and then the issue for the blind.

Do you want to respond?

Mr. **Carozza**. Mr. Moody, you raised three issues there. First, on the name. All of our automated notices coming from our national headquarters will have the local office or teleservice center telephone number for the beneficiary to contact and our notices that come out of our local offices, the manual notices, will have the name of a representative and the telephone number of the local office.

With regard to the language, we had an ongoing——

Mr. **Moody**. So your national notices always have a local number to phone?

Mr. **Carozza**. I think almost all of them, yes, sir.

Mr. **Moody**. So that is not the problem. The name of a person is not on there but you say that is not appropriate or not possible?

Mr. **Carozza**. We don't know who would be handling their claim or who would be free at the time they want to contact us.

Mr. **Moody**. On the plain language requirement?

Mr. **Carozza**. On the plain language, we have had an initiative in the Social Security Administration for several years to simplify all of our language, to make it clear, to make our notices look better and more understandable, and we have made a lot of progress in that area.

Mr. **Moody**. So you are still pushing that area?

Mr. **Carozza**. We are not done yet, but we are still pushing. There is a lot of work to do. We send out about a quarter of a billion notices and letters a year, so it is a very big undertaking. We are more than halfway there, and we have improved all those somewhat, and we have improved most of our notices—over half of them—completely.

Mr. MOODY. So you are still working on that. That is a specific program you have underway?

Mr. CAROZZA. Yes, sir. We have even devoted—we have put together a special staff just to coordinate that whole area.

Mr. MOODY. Then finally, the blind. Could they be treated like SSI recipients with a registered letter or phone call?

Mr. CAROZZA. We would think it wouldn't be appropriate at this time to extend it. We have a requirement for the blind, as you know. We have had about 1,200 or so applicants come in and we have given the choice of how they would like to get their notices. I think 83 percent have said that they just want our regular notices by mail. Another 6 percent have said they want the regular notice by certified mail. So, 89 percent of them we can accommodate in our current system. The other 11 percent have said they would like somebody to call them up and read the notice.

We would like to have time to see how we have implemented the provision for the blind before we move to any further——

Mr. MOODY. This pilot project for the blind, how far along with that are you?

Mr. CAROZZA. We have implemented it for all new applicants and I think by the end of July of next year we have to have it available for all SSI blind recipients.

Mr. MOODY. I see.

Mr. CAROZZA. We are getting it done on a daily basis as more applicants come in.

Mr. MOODY. You do it for all SSI blind recipients. They are now going to be getting it?

Mr. CAROZZA. Yes, sir. That is already in the law.

Mr. MOODY. Getting registered mail or a phone call?

Mr. CAROZZA. We offer them the choice of our regular mail, certified mail, or a telephone call.

Mr. MOODY. You are saying 90 percent are content with an ordinary piece of mail, right?

Mr. CAROZZA. Yes, sir.

Mr. MOODY. Of those who aren't, you are going to be sending them either a phone call or registered mail. Is that right?

Mr. CAROZZA. We will have a claims representative give them a phone call and read them the notice.

Mr. MOODY. Right.

Now, what about extending that to non-SSI, to simply social security recipients, Social Security beneficiaries who are blind?

Mr. CAROZZA. We would like to have the data for the SSI program before we make any decision on that kind of a change. It is potentially a very expensive thing to do given the large number of notices and letters we send out to have somebody call up and read them.

Mr. MOODY. Could there be an automated system so you get a recorded message to someone?

Mr. CAROZZA. We have not investigated that, but I would certainly be willing to look at that.

Mr. MOODY. There would only be a finite number of messages you would be reading people?

Mr. **Carozza**. We send out a lot of different messages.

Mr. **Moody**. It is not infinite. There is some finite number of messages you send out. Presumably they could be automated. Let us know. Would you get back to us on that?

Mr. **Carozza**. Sure. We will look at that.

[The information is contained in an attachment to a letter from SSA at p. 52.]

Mr. **Moody**. Number 7. Social Security Administration would be required to add on its computer file of each recipient the name of each and every legal representative, therefore facilitating his or her ability to work with the agency. Also notify applicants who receive adverse decisions of the option to obtain legal assistance. Any comment on that?

Mr. **Carozza**. Yes, sir.

A couple of things. Right now everybody who gets an adverse decision from Social Security on a claim for benefits does get a pamphlet which explains their right to be represented and offers additional information, and if they contact their local Social Security office, then each of our local Social Security offices can provide information about local bar association, referral services and free legal services.

Mr. **Moody**. You do the second part of this already. You notify applicants who receive adverse decisions of the option to obtain legal assistance. That is already done?

Mr. **Carozza**. Yes, sir. We already do that.

Mr. **Moody**. Without exception that is done?

Mr. **Carozza**. Yes, sir.

Mr. **Moody**. What about having the name of the attorney in the file so that when an attorney comes in to represent the client he can proceed rather than being sent home because his name isn't in there?

Mr. **Carozza**. What we are establishing now, most of our clients who have attorneys representing them come in at the administrative law judge hearing level and our Office of Hearings and Appeals has just implemented a tracking system which will include on it the name of the representative. So we are taking care of that for most of our beneficiaries because most of them who are represented are first represented at the hearing level.

Mr. **Moody**. Sandy, do you have a comment on that?

Mr. **Levin**. I do, but we have another vote. I think I want to give our colleague a chance to speak so he doesn't have to come back a third time. Why don't we do this? Maybe we should conclude, Mr. Chairman, this portion, and we will be back in touch with you. I want to talk with you further on the foreign language requirement, on the provision for notification as to local bar association availabilities, and let's do that later on.

Mr. **Moody**. All right. One final quick comment on reapplying. Social Security Administration would be required to provide claimants whose applications are denied with a clear explanation of the consequences of reapplying rather than appealing. We have had complaints that people don't realize by reapplying they lose the benefits—the lock stops and doesn't start again until they reapply so they may lose 6 months, 1 year, 2 years of benefits.

Can you take steps to make sure people understand the ramifications of reapplying as opposed to appealing?

Mr. **Carozza**. We are taking steps now to revise our notices, so people will understand the differences between reapplying and appealing. I think I have to approve it and then we can send it out.

Mr. **Moody**. Fine.

Mr. **Levin**. Can we see that language after you approve it?

Mr. **Carozza**. Yes, sir.

Thank you very much, both of you. Sorry about the time choppiness because of the voting problem.

[Additional questions and answers follows:]

ANDY JACOBS, JR., INDIANA, CHAIRMAN
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COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

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KAREN E. WORTH, SUBCOMMITTEE MINORITY

October 12, 1988

Mr. Michael Carozza
Deputy Commissioner for Policy and External Affairs
Social Security Administration
Room 900, Altmeyer Building
6401 Security Boulevard
Baltimore, Maryland 21235

Dear Mr. Carozza:

Some Members of the Ways and Means Social Security Subcommittee asked me to send along the enclosed September 22nd transcript excerpts which include testimony which followed your own and therefore was not heard by you. I think all the Members of the Subcommittee would be pleased if you would peruse this testimony.

I am told that you plan to forward to the Subcommittee information about the provision of notice to blind title II beneficiaries. Thank you for your help in this regard.

I think the Members of the Subcommittee who were present for the testimony of Marie Jones were especially touched by the conspicuous inequity involved.

We note that the IRS has already implemented a rule under which citizens who can demonstrate erroneous advice from agents of the Service can, where detrimental reliance can also be demonstrated, be given the treatment they would have received had they been given proper advice.

I believe the IRS initiated this policy by regulation. Is there any reason why the Social Security Administration could not follow suit?

One reason why a number of Subcommittee Members believe the Social Security Administration should follow suit is the plans by the Administration to embark on an expanded use of telephonic communication for advice to citizens. It certainly would save a lot of legislating if you and Ms. Hardy and other members of the Administration could see your way clear to following the example of good citizenship set by the IRS in this regard.

Thank you for you kind attention. I look forward to hearing from you.

Sincerely,

Andy Jacobs, Jr.
Chairman

AJ/kw
Enclosures

DEPARTMENT OF HEALTH & HUMAN SERVICES Social Security Administration

Refer to: Baltimore MD 21235

OCT 2[illegible] 1988

Honorable Andy Jacobs
Chairman, Subcommittee
on Social Security
House Ways and Means Committee
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your October 12, 1988, letter concerning the issues that were discussed at the subcommittee's September hearing on H.R. 5250.

As I promised when I appeared before the subcommittee, a representative from the Social Security Administration (SSA) was present throughout the September 22 hearing. That representative listened closely to the testimony given by the other witnesses and gathered copies of all of the prepared statements. We have read these statements carefully, with a view to taking any necessary action to assure that SSA's service to the public is the best that it can be.

The information requested by the subcommittee concerning the provision of notice to blind title II beneficiaries was forwarded to the subcommittee as an insert for the record of the hearing. For your convenience, we have enclosed an additional copy of this information.

Concerning the testimony of Marie Jones, we were interested in the material you gave us concerning new regulations developed by the Internal Revenue Service. We are reviewing our own procedures to see if regulations can be developed that address the situation of incorrect information.

Sincerely,

M'liss Scott Houston for MCC
Michael C. Carozza
Deputy Commissioner
for Policy and External Affairs

Enclosure

Possible use of an automated system to give blind title II beneficiaries a recorded version of their notices

SSA has considered the possibility of developing an automated system in which stock messages could be recorded and then used to suit each beneficiary's situation. Unfortunately, no one message or group of messages will do. The majority of our title II notices are a mixture of stock and personalized information. Because of this, there is little advantage to using an automated telephone notice system when most notices must be recorded individually and only a few notices could be used repeatedly.

Even if we could record personal messages for all blind beneficiaries, we would not want to do so for a number of other reasons. One of our major concerns is privacy. Many of the notices that we send to applicants and beneficiaries contain financial or personal information (e.g., medical decisions) that we must safeguard. To ensure the confidentiality of information released over the telephone, we must be able to identify the call recipient as the person who is authorized to receive the notice.

An automated system makes reliable identification difficult at best. Therefore, beneficiaries would not have the full privacy protection the law provides. We could make disclosures using automated phone notices if the beneficiary gives us written consent for any disclosures to third parties which might inadvertently occur, although beneficiaries could not reasonably foresee all the consequences of such disclosures when they give consent.

Also, for due process reasons, we must be certain that a notice reaches the person for whom it is intended. An automated system can show that it delivered a notice, but we have no way of knowing that the proper person actually received the message, either firsthand or through a third party. A blind beneficiary might disregard the written version of the notice knowing that if it was important he or she would have received a phone call.

We are not convinced that a recorded reading of a lengthy notice is providing good public service. Instead, we would prefer to look into the feasibility of offering the same notice service to blind title II beneficiaries that we now offer to blind SSI recipients. However, since there are more blind title II beneficiaries than blind SSI recipients, the cost and workload impact is potentially greater than with SSI. We believe that we should assess the cost and workload data from our SSI project before we decide whether or not to extend this procedure to title II.

Mr. Moody. Thank you very much, both of you. Sorry about the time choppiness because of the voting problem.

Representative Robert Clement of Tennessee. Hopefully we can get going.

STATEMENT OF HON. BOB CLEMENT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. Clement. Mr. Chairman, I represent the Fifth Congressional District of Tennessee, as you and Mr. Levin know, which consists of Nashville, Tenn., as well as one rural county, Robertson County.

Thank you for convening this hearing today. I am pleased that the subcommittee is investigating problems with the delivery of services by the Social Security Administration. It is essential that our fellow citizens be provided with the most responsive service and the highest quality of service possible.

The programs administered by the Social Security Administration are among the most important that our Federal Government operates. Individuals see the amount of social security taxes being taken out of their paychecks and they rightly are led to expect that these benefits will assist them when they retire or are disabled. When individuals have questions about their benefits, they telephone the local security office. As a result, Social Security Administration has one of the highest number of personal contacts with our citizens. Consequently, the quality of the services delivered reflect well or ill on our Federal Government as a whole.

As you know, the Social Security Administration has begun reducing its staff while modernizing its technology. The establishment of a national 800 number as well as the opportunity for future beneficiaries to receive their prospective earnings statements are laudable changes, which I applaud. However, evidence I have gathered in the Fifth District of Tennessee suggests that the changes may be proceeding too rapidly and with too few personnel and, as a result, services to our fellow citizens are deteriorating.

In the Fifth District of Tennessee the problem is twofold. First, there is an inadequate number of qualified personnel making disability determination decisions. And when these individuals reject a disability claim, the problem becomes one of too few clerical and other support personnel to help process later actions initiated by the applicant. By relying on attrition, particularly in high turnover clerical positions, citizens are inadequately served.

One problem that is particularly alarming is the excessive time it takes for a Social Security disability applicant to receive a decision once that individual has taken an appeal of the agency determination to an administrative law judge.

Apparently the administrative law judge office in Nashville contracts out the typing of hearing transcripts to New York, Florida, and Puerto Rico. Applicants are usually not informed of the judge's decision until the hearing transcript has been typed and then approved by the administrative law judge. In the fifth district, it has been taking up to 7 months before applicants are informed of the decision.

Let me share several examples:

Mrs. Vickie Kelley of Old Hickory has a brain tumor. She pleaded her case before an administrative law judge in February. The administrative law judge made an unusual bench ruling that Mrs. Kelley was disabled and entitled to benefits. On August 26, 7 months later, Mrs. Kelley's attorney called the administrative law judge because they had not been notified about the case. The attorney was told that the case had been returned from the typing pool in New York because the tape recording was inaudible and the case needed to be redictated.

Mr. Chairman, why does it take 7 months to determine that a tape recording cannot be heard? Why was Mrs. Kelley or her attorney not informed earlier that there was a problem?

Mr. Charles Ingle of Goodlettsville, is suffering from a debilitating disease called GNL. He applied for disability benefits in April 1987, was turned down then and for a subsequent application, and then appealed before an administrative law judge in May of this year. He has yet to hear anything from the administrative law judge and according to his wife, they will lose everything if they do not receive a decision in October.

Mr. John Hobgood of Springfield suffered a heart attack in March of 1977. He returned to work and continued to work until he had a second heart attack in February 1986. Mr. Hobgood did not file a disability claim at that time, but in February of this year, Mr. Hobgood had surgery on his spine and neck and as a result, he cannot lift heavy objects, nor can he reach over his head or stoop or bend for any length of time. He applied for disability benefits in April and appealed an adverse Social Security Administration decision before an administrative law judge on July 18. He has yet to receive news of the administrative law judge decision and a mid-August inquiry by my Springfield district office has been unanswered.

Mr. Chairman and members of the subcommittee, the above examples illustrate the inefficient manner in which my constituents' cases are being handled. First, unqualified and poorly trained disability determination personnel reject a benefit claim. An appeal must be taken, although it is quite likely that many are not. But no matter how well administrative law judges are doing their job, the geographically distant support staff is inadequate to transcribe, type and deliver the hearing transcripts and administrative law judge decisions.

What is the solution? Perhaps the agency should be held to a strict timetable for processing decisions with benefits awarded when that timetable is breached. More practically, transcripts should not be contracted out to distant locations. Who knows what the backlog of cases is in Florida, New York or Puerto Rico? It is clearly too large to handle the disability hearings held in Nashville. Hearings should be transcribed locally.

Alternatively, hearings should not be recorded. The hearings should be transcribed contemporaneously by court reporters. How much is actually saved by relying on audio recordings that must be transcribed at a later date? In particular, with the elapse of up to 7 months, how much is saved when citizens face mounting medical expenses, stave off creditors or, not too infrequently, die while awaiting an administrative law judge decision?

Mr. Chairman and members of the subcommittee, Social Security Administration's shortage of trained personnel and is excessive reliance on distant and uncertain technology is depriving the citizens of the fifth Congressional district of benefits they need and are entitled to. I urge you to assist us in developing proposals that address this serious problem in my district and elsewhere.

Mr. Chairman and members of the subcommittee, thank you for convening this hearing today, and for a southerner who talks slow, I did the best I could.

Mr. MOODY. You did very well.

With your permission, I think we ought to send that off to the gentlemen from SSA with a request for their comments. I know they have representatives here but I would like the committee to send a letter to them attaching your testimony, because it is very powerful testimony.

I think we had better go vote now and then come back.

[A short recess was taken.]

Mr. MOODY. We are happy to have now the Legal Assistance of North Dakota, Carole Shumacher representing. We have the American Federation of Government Employees—AFGE—represented by Carol Fehner, and we have Lucretia Paschall, Member, American Association of Retired Persons, on behalf of Marie Jones of Dallas, Tex.

Ms. Carol Shumacher of North Dakota.

STATEMENTS OF CAROLE SCHUMACHER, PARALEGAL, LEGAL ASSISTANCE OF NORTH DAKOTA

Ms. SCHUMACHER. Thank you, Mr. Chairman, and members of the committee. My name is Carole Schmacher. I presently work at the Fargo Regional Office of Legal Assistance of North Dakota and represent clients filing claims with Social Security Administration. I was also employed by Social Security Administration for approximately 3 years prior to my employment at land.

On behalf of Social Security claimants and legal advocates across the country, I want to thank you for inviting me here today. In general, we believe H.R. 5250 is good and hope that any legislation that is implemented will focus on beneficiaries' needs to be treated fairly under the law.

My testimony today will focus on the ramifications of this legislation, but further will point out the inadequacies of legislation if the Department of Health and Human Services fails to implement regulatory measures to assure protection to Social Security beneficiaries. It is indeed satisfying to see that some accountability is being built into the legislation to assure that the Secretary carries out specific functions in their telephone service centers. However, not only should the Secretary retain a copy of this receipt, but legislation should provide that, in all cases, the receipt be permanently retrievable on a computer base in local Social Security offices.

There are numerous files maintained on the same beneficiary in different centers throughout the country. All too often, a beneficiary is at a great disadvantage because Social Security Administration states they do not have the pertinent data available to provide service. However, if a person is given misinformation by a Social

Security Administration employee what legal protection will a written receipt provide a beneficiary?

While employed by Social Security Administration the district office routinely completed what they call a misinformation report of contact. This form stated that an employee who allegedly gave a claimant misinformation had been employed for a number of years, underwent a certain amount of training, and it was highly unlikely their employee would give out information that was erroneous. Incidentally, the North Dakota TSC supervisors office is across the hall and monitoring the information provided is not done or if done, it is inadequate.

Social Security Administration must take some responsibility for disseminating erroneous information to beneficiaries. If a claimant can prove they were provided with incorrect information, any penalties, overpayments, or other adverse actions should be legally estopped at that time without the beneficiary pursuing enforcement through litigation in the courts.

Tighter accountability by the Department of Health and Human Services must be legislatively mandated.

Next, assistance to the disabled homeless should be a top Social Security Administration priority.

One of the main problems with an SSI application is the lengthy determination process. Based on my experience of working with SSI applicants, it is not unusual for Social Security Administration to take a year or longer to make an SSI eligibility determination.

One of my clients filed for SSI in March 1987 and we finally had a hearing before an administrative law judge in June of 1988. She has survived on $7 per month from her utility allowance for several years. She still has not received any SSI check. At the present time there is no legislation that I am aware of that mandates the Social Security Administration to adhere to a specific time limit for eligibility determinations.

My written testimony outlines the statutory time limits for processing medical assistance and food stamp applications. Under certain conditions even food stamps are available in 5 days. The homeless can get food, what about basic necessities of clothing and shelter? If an applicant can receive medical assistance and food stamp benefits within a statutory time limit, the same provisions should hold true to the receipt of Social Security or SSI benefits to obtain the basic necessities of life.

A farmer's wife who was suffering from terminal brain cancer contacted me in March of this year when her January SSI application was denied because of what they quoted as "excess resources." We appealed to Social Security Administration and provided documentation that because of special SSI rules for self-employed individuals, she was financially eligible for the program. My client died on July 17 before she received any further determination from Social Security Administration. We still have not received any notice from Social Security Administration regarding her eligibility.

In establishing meaningful legislation, it is imperative that indigent and homeless individuals are given assistance now, not a year from now. Recently one of my client's SSI checks was reduced because of an erroneously assessed overpayment. I contacted Social

Security Administration a few days after she received her notice and requested a waiver. The Social Security representative failed to update the computer and she got another notice saying she could request a reconsideration.

I again called the district office and they said they would assure her overpayment would not be withheld from her SSI check. Her SSI check in September was indeed reduced. She was then threatened with a shutoff by her utility company because she did not have $35 to pay her light bill. I requested local Social Security Administration office to provide an emergency payment to her but they refused.

Further, the claims representative didn't even know about the regulation on providing emergency assistance to eligible SSI recipients. As a Social Security employee, I was told by my manager to discourage any advance emergency payments because they were "too much paperwork."

Social Security Administration has failed to recognize the immediate needs of the homeless. Their enforcement of the regulations are blatantly ineffective.

As a legal representative, I fully support section (8) in H R. 5250. At the present time, I must rely on my clients to provide a photocopy of any notice that they receive. Social Security Administration employees have told me on numerous occasions that if I want a copy they will have to do a manual notice to provide the same type of information as was sent to the claimant. Any and all notices that are sent to a beneficiary should be sent to their legal representative and maintained in an electronic information retrieval system used by Social Security Administration. This would eliminate the constant problem of Social Security Administration stating they don't have the file here.

This would be particularly helpful to homeless and transient individuals to assure that meaningful information is available at a moment's notice in any local Social Security Administration office.

All notices of any adverse action should provide information regarding the applicant's right to representation under the law and where to go to get legal aid.

We fully support the proposed bill regarding applicability of res judicata found in section 9. In any notice sent by Social Security Administration when applicants are denied benefits they are simply told to reapply later. Ideally, legislation should mandate that any subsequent reapplication be treated as a reopening of their prior application. The burden of proof to establish a correct date of onset can then be established based on the entire record of the applicant.

H.R. 5250 provides for increased service to Social Security beneficiaries. We are grateful for your hard work on this bill and we honor that work.

Thank you. I would be happy to answer any questions.

Mr. Moody. Thank you.

[The statement of Ms. Schumacher follows:]

FOR THE SUBCOMMITTEE ON SOCIAL SECURITY #12
Committee on Ways and Means
H.R. 5250 The Social Security Beneficiary Protection Act
September 22, 1988
Testimony of Carole Schumacher

Mr. Chairman and members of the committee, my name is Carole Schumacher. I presently work at the Fargo Regional Office of Legal Assistance of North Dakota (LAND) and represent claimants who seek payments from the Social Security Administration for benefits due them under Title II and Title XVI (Supplemental Security Income for the Aged, Blind and Disabled) of the Social Security Act. I also was employed by SSA for approximately three years prior to my employment at LAND. During my employment at SSA's District Office in Fargo, I was President of the local AFGE (American Federation of Government Employees) Union.

On behalf of Social Security claimants and legal advocates across the country, thank you for this opportunity to speak to you on issues of great concern to us all. In general, we believe the Social Security Beneficiary Protection Act to be a good one and hope that any legislation that is implemented will focus on beneficiaries' needs to be treated fairly under the law.

My testimony today will focus on the ramifications of this legislation, but further will point out the inadequacies of legislation if the Department of Health and Human Services fails to implement regulatory measures to assure protection to Social Security beneficiaries.

SECTION 3: Demonstration Projects Relating To Accountability For Telephone Service Center Communications.

It is, indeed, satisfying to see that some accountability is being built into the legislation to assure that the Secretary carries out specific functions in their telephone service centers. I would draw your attention first to the proposed bill, Section 3(b)(3) which discusses the actual receipt requirements. I suggest that not only should the Secretary include in the file maintained by Social Security a copy of said receipt, but that legislation be changed to include the provision that in all cases, whether or not there is a paper file maintained, the receipt is retrievable on a computer base in local SSA offices.

All too often SSA is unable to locate a file on a beneficiary and many times there are numerous files maintained on the same beneficiary in different centers throughout the Social Security system. All too often, a beneficiary is at a great disadvantage because SSA states that they do not have a particular document available to them that is pertinent to service beneficiaries.

The other item that is missing here is inclusiveness of what legal protection a written receipt or a letter will provide to a beneficiary. In cases when a beneficiary can provide a written document of advice they received from an SSA employee, what purpose will it serve on behalf of Social Security recipients? If a beneficiary can prove that they were given misinformation by a SSA employee, what weight will that be given? While employed by SSA, it was a common practice in the District Office to routinely complete what they call a "Misinformation Report of Contact". There were many occasions where a beneficiary had retained information regarding a contact with a specific Social Security employee, only to have the Social Security District office personnel complete a "misinformation RC" form stating that the employee who gave them the information has been employed for a certain number of years, underwent a certain amount of training, and it was highly unlikely that they would give out information that was erroneous. Once a claimant has proven they were given misinformation, what provision will the Secretary turn to to further disallow or penalize a beneficiary?

SSA must take some responsibility for disseminating erroneous information to beneficiaries. If a claimant can prove that they were provided with incorrect information, they should not be subjected to scrutinization of an overpayment that resulted from erroneous information on which they relied to be true. If a beneficiary can provide proof that they were given misinformation, any penalties, overpayments, or any other adverse actions should be legally estopped at that time without the beneficiary pursuing enforcement through litigation in the courts.

If the only protection that this accountability will give a beneficiary is a piece of paper stating that they were given misinformation, without any penalties assessed against SSA, it then lacks any useful purpose. Tighter accountability by the Department of Health and Human Services must be mandated in legislation that is passed.

SECTION 4: Availability and Correction of Earnings Record Information.

Here again, if the Secretary fails to provide adequate information within 14 days to a beneficiary requesting information about his record of earnings, what recourse does the beneficiary have? In addition, any information they receive should be meaningful. If you have ever requested a record of earnings on your own, you know that what you receive from SSA is a listing of numbers. Numbers showing years and amounts of earnings are many times meaningless because it is difficult to determine the name of employer who reported the wages. A beneficiary may be able to recall the name of employers for whom they have worked, however, for the most part would not have access to an employer's federal employment identification number. It would be extremely useful to have the categorization include the name of all employers for whom the beneficiary has ever worked, along with the wage information.

We, of course, fully support the deletion of the current three-year, three-month, and fifteen day statute of limitations. So long as a beneficiary is able to prove earnings, there should be no time limit for submitting said documents. We highly approve of the exception to the rule of statutory limitations.

SECTION 6: Assistance to the Homeless.

Assistance to the homeless should be a number one priority of the Department of Health and Human Services. Most of the homeless in this country are in need of immediate help. One of the main problems with an SSI application is the lengthy determination process. Based on my experience of working with SSI applicants, it is not unusual for SSA to take a year or longer to make a determination of eligibility for SSI. This is usually in the cases of disabled individuals; however, the determination of resource and income eligibility holds up benefit payments as well. It is, indeed, time to establish time limits statutorily to which SSA must adhere in processing applications for benefits. At the present time, there is no legislation that I am aware of that mandates a specific timely determination of eligibility by SSA. According to 20 C.F.R. §404.1642 and 20 C.F.R. §416.1042, the law provides for "target levels" and "threshold levels" in processing applications through the Disability Determination Section. Specifically, the Secretary has designated a target level of 43 days for a processing time on Title XVI initial claims and a "threshold level" of 57.9 days for Title II and XVI initial claims. Those processing time standards are merely a target goal for DDS. On behalf of a beneficiary, these processing time standards do nothing to protect a homeless individual who is disabled and unable to obtain the basic necessities of life.

I would like to call to your attention the regulations found at 42 C.F.R. §435.911 regarding a timely determination for Medicaid eligibility. This regulation mandates that:

> (a) The agency must establish time standards for determining eligibility and inform the applicant of what they are. These standards may not exceed -
> (1) 60 days for applicants who apply for Medicaid on the basis of disability; and
> (2) 45 days for all other applicants.
> (b) The time standards must cover the period from the date of application to the date the agency mails notice of its decision to the applicant.

(c) The agency must determine eligibility within the standards except in unusual circumstances, for example -
  (1) when the agency cannot reach a decision because the applicant or an examining physician delays or fails to take a required action, or
  (2) when there is an administrative or other emergency beyond the agency's control.

(d) The agency must document the reasons for delay in the applicant's case record.

(e) The agency must not use the time standards -
  (1) as a waiting period before determining eligibility; or
  (2) as a reason for denying eligibility (because it has not been determined eligibility within the time standards.

Additionally, according to 7 C.F.R. §273.2, food stamp eligibility and payment must be made within 30 days from the date on which an applicant completes a food stamp application.

The same provisions should be required of SSA in making determinations on applications for disability and SSI benefits. If a claimant or a beneficiary can be determined to be eligible for medical assistance and food stamp benefits within a statutory time limit, the same provisions should hold true of receiving Social Security or SSI benefits to obtain the basic necessities of life; namely, clothing, food, and shelter.

All too often, SSA makes a referral of an indigent claimant to the County Social Service Board for interim assistance. Many states, like North Dakota, have no general benefit programs available to homeless individuals. Even when assistance is available, in many cases a homeless individual is unable to jump through all the legal hoops to obtain assistance when referred from agency to agency.

In establishing meaningful legislation, it is imperative that indigent and homeless individuals are given assistance when they need it the most. In 1985, an advance payments provision was established by the Secretary in an attempt to provide emergency assistance to those claimants that are eligible for SSI benefits. This provision, to say the least, has been a failure. In my most recent attempt to obtain emergency assistance for a client who was about to have her lights shut off, the local Social Security office refused to make any advance payment to my client. Moreover, when I questioned the SSA employee regarding an advance payment, she stated that she knew of no such provision to provide an advance payment to my client. She stated that they could initiate an expedited payment; however, that would take at least 15 days. From my experience of working in the local District Office, it was a well-known fact that as a Social Security employee, we were to discourage to provide any advance payments because "they were too much paperwork". According to a survey conducted among legal advocates nationwide, in more urban areas there is not sufficient money in the District Offices to provide advance payments to eligible individuals. In the cases where a client is eligible for an advance payment, the payments are issued in the form of a third-party check. The indigent claimant many times is unable to cash the check or is charged $10 or so by check cashing service providers. It should suffice to say that any indigent client does not normally have a local bank at which they can cash a third-party check. It appears that SSA has failed to recognize the immediate needs of the homeless. Their enforcement of the regulations are blatantly ineffective.

In numerous situations, an applicant for SSI must rely on family members, if any they have, to provide them the basic necessities of life until they receive notification from SSA that they are eligible for payments. When SSA finally determines the amount of money a beneficiary is due as a back payment, they routinely count any loans that were given to them by family members as a gift, calling it "in-kind income," and reduce their SSI benefit accordingly. Recently, we have had to present several cases to the Administration Law Judge even after the claimant had repaid family members any money that was loaned them while they were awaiting payment from SSA. For the most part, an SSI claimant, particularly those that have a mental impairment or are homeless, are unable to provide written documentation as to how they survived during an interim period of time when they lacked any source of regular income.

SECTION 7: Notice Requirements.

It is necessary that all notices be written in a simple and clear language. However, the notice should also be "meaningful". For individuals who have a mental impairment, simple and clear language is not the only necessity. It must e very clear as to exactly what action is required by the applicant in order to receive benefits. Any notice that is sent to an individual should be at the second or third grade reading level. This is particularly important for mentally impaired SSI recipients, as well as aged individuals over the age of 65 who are, perhaps, unable to understand the legal jargon. There are numerous instances where we have to file a request for reconsideration just to determine the actual legal problem.

SECTION 8: Representation of Claimants.

As a legal representative, I fully support Section 8 of the Bill before you. In addition, however, not only should SSA retain the identity of a legal representative on an electronic information retrieval system, but also mandate that any notice sent to a Social Security applicant, or beneficiary, be automatically sent to the claimant's representative.

At the present time, a legal representative must rely on their client to provide a photocopy of any notice that they receive. SSA employees have told me on numerous occasions that if we want a copy, they will have to do a "manual notice" to provide the same type of information as was sent to the claimant. Any and all notices that are sent to a beneficiary should be maintained in an electronic information retrieval system used by SSA. This would eliminate the constant problem of SSA stating that they "do not have the file here". In today's high tech society, it is imperative that an agency that affects such a large clientele utilize a state-of-the-art retrieval system. This would be particularly helpful to homeless and transient individuals to assure that no matter which Social Security office they are close to, meaningful information is available at a moment's notice.

It goes without saying that it is, indeed, important for a beneficiary to be informed of their right to legal representation when they receive any and all notices of adverse action. According to the information found in Appendix A of this testimony, it is clear that a claimant who has attorney representation is more successful in obtaining benefits through a reversal of any adverse decision made by SSA. It is also interesting to note that in the ten years from 1977 to 1987 there is approximately an 8% increase in the reversal rates at the Office of Hearings and Appeals level. Because of the complexities involved with the Social Security Administration and benefit eligibility, it is becoming more and more important for an applicant to have legal representation. All notices of any adverse action should provide information regarding any applicant's right to representation under the law.

SECTION 9: Applicability of Administrative Res Judicata: Related Notice Requirements.

We fully support the proposed bill regarding applicability of res judicata found in Section 9 of the Bill. In any notice sent by SSA when applicants are denied benefits, they are told simply to reapply later. To remedy this, the legislation should mandate that any subsequent reapplication be treated as a reopening of their prior application. The burden of proof to establish a correct date of onset can then be argued based on the entire record of the applicant. The basis for disability should be to determine the actual date of onset of when the beneficiary could no longer work due to their disabling impairments.

We are hopeful. The Social Security Beneficiary Protection Act provides for increased service to Social Security beneficiaries. We are grateful for the good hard work of so many dedicated people, and we honor that work. Thank you for your time in this matter. I will be happy to answer any questions.

APPENDIX "A"

Table 6. Reversal Rates of Total Dispositions With and Without the Presence of Attorneys and Non-Attorney Representatives, Social Security Administration, Office of Hearings and Appeals, National Data, Fiscal Years 1977 Through 1987

	Reversal Rates of Dispositions								
Fiscal Year	With Attorney	Without Attorney	With Non-Atty	Without Non-Atty	With Both Attorney and Non-Atty	Without Both Attorney and Non-Atty	With Either Attorney or Non-Atty	Without Either Attorney or Non-Atty	Total Dispositions
1977	57.8%	39.4%	53.0%	43.7%					47.0%
1978	60.5%	44.1%	56.6%	48.4%					49.3%
1979	62.1%	48.0%	58.9%	52.1%					53.0%
1980	63.0%	50.7%	59.3%	55.1%					55.8%
1981 1/	61.9%	50.4%	57.7%	54.8%	61.3%	55.1%	60.9%	48.7%	55.2%
1982	59.5%	47.5%	55.5%	52.4%	58.7%	52.7%	58.7%	45.8%	52.7%
1983	59.0%	46.1%	54.5%	52.3%	58.8%	52.5%	58.1%	43.7%	52.7%
1984	59.5%	43.2%	53.9%	51.1%	58.3%	51.4%	58.4%	40.1%	51.6%
1985	59.0%	42.1%	53.0%	50.4%	58.5%	50.6%	57.5%	38.6%	50.9%
1986	60.1%	36.3%	52.2%	47.5%	61.4%	43.1%	58.3%	32.2%	48.3%
1987	61.7%	44.7%	54.4%	53.8%	62.1%	53.7%	59.9%	41.6%	54.0%
Change 1986 to 1987	+ 1.6%	+ 8.4%	+ 2.2%	+ 6.3%	+ 0.7%	+ 10.6%	+ 1.6%	+ 9.4%	+ 5.7%

1/ FY 1981 is the first time that data are available for attorneys and non-attorneys both present together for a disposition.
NOTE: The 1987 percentage of dispositions by attorney/non-attorney combinations are:
54.3% with attorneys,
16.2% with non-attorneys,
3.1% with both attorney and non-attorney,
67.4% with either attorney or non-attorney.
SOURCE OF DATA: OHA-Case Control System.

Table 3. Reversal Rate of Total Hearings Held With and Without the Presence of Attorneys and Non-Attorneys Representatives, Social Security Administration, Office of Hearings and Appeals, National Data, Fiscal Years 1977 Through 1987

	Reversal Rates of Hearings Held								
Fiscal Year	With Attorney	Without Attorney	With Non-Atty	Without Non-Atty	With Both Attorney and Non-Atty	Without Both Attorney and Non-Atty	With Either Attorney or Non-Atty	Without Either Attorney or Non-Atty	Total Hearings Held
1977	59.7%	45.7%	57.1%	50.1%					50.8%
1978	62.1%	49.6%	60.1%	53.8%					54.6%
1979	63.5%	52.5%	61.6%	56.5%					57.2%
1980	64.3%	53.6%	61.6%	58.2%					58.7%
1981 1/	62.3%	51.5%	58.5%	57.2%	61.3%	57.3%	61.3%	48.0%	57.4%
1982	59.6%	48.1%	56.0%	54.7%	58.7%	54.8%	58.9%	44.4%	54.9%
1983	59.3%	48.5%	56.0%	55.3%	58.8%	55.4%	58.7%	44.1%	55.4%
1984	60.3%	49.8%	56.2%	56.6%	58.3%	56.5%	59.5%	45.9%	56.6%
1985	59.4%	48.1%	55.2%	55.3%	58.6%	55.2%	58.6%	43.1%	55.3%
1986	61.8%	48.0%	55.7%	57.2%	61.5%	56.6%	60.4%	43.6%	57.0%
1987	63.0%	49.3%	57.5%	58.5%	62.1%	58.1%	61.7%	44.1%	58.3%
Change 1986 to 1987	+ 1.2%	+ 1.3%	+ 1.8%	+ 1.3%	+ 0.6%	+ 2.7%	+ 1.3%	+ 0.5%	+ 1.3%

1/ FY 1981 is the first time that data are available for attorneys and non-attorneys both present together during a hearing.
NOTE: The 1987 percentages of hearings held by attorney/non-attorney combinations are:
65.8% with attorneys,
18.9% with non-attorneys,
4.1% with both attorney and non-attorney,
80.6% with either attorney or non-attorney.
SOURCE OF DATA: OHA-Case Control System.

Source: NOSSCR Social Security Forum, Vol. 10, No. 5, May 1988, pg 10 and 11.

Mr. **Moody**. Why don't we continue with the testimony and come back with questions?

Ms. Fehner.

STATEMENT OF CAROL FEHNER, SECOND VICE PRESIDENT, COUNCIL 220, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES (AFL-CIO)

Ms. **Fehner**. My name is Carol Fehner. I have been employed by Social Security for almost 15 years. I am the second vice president of AFGE Council 220, which represents all of the field office employees in the country. I speak for AFGE which represents the majority of Social Security Administration employees in the country: field offices, data operations centers, payment centers, offices of hearings and appeals, and field assessment and central office components.

I communicate with people all across the country. I have worked in two different regions and nine different offices as a claims representative. I can tell you very clearly that some of the things that were stated today by the administration are incorrect. I ask my statement be included in the record and I highlight some key areas of that, but I would like to address some of the key statements that have been made.

Mr. **Moody**. We will include your entire statement.

Ms. **Fehner**. Thank you. One of the key things that I wish to discuss today in my statement and verbally is the fact that the agency is not able to respond to the beneficiaries needs for services. We have such a low staff level we cannot do the work we are charged to do.

In an attempt to produce statistics and to get some volume of work out of the offices, the agency has done such things as not protect the eligibility of beneficiaries who telephone us saying they wish to file for Social Security benefits. Their beneficiaries are told they will be called back later. This time period can be as much as 3 months later.

In Corona, California I have records here—and I will be glad to provide them to you—of beneficiaries who have lost money because the agency refused to protect their eligibility for benefits. Now, this information has been shared both with the Inspector General and with the administration's higher level, and nothing has occurred. This has been over a year and a half ago. These people have not been made whole and they have been cheated by direct order of the manager of that office.

Now, this is in violation of the mission of the agency that the receipt process proposed in this bill would address. I think it is imperative that be done immediately and across the board. The agency has systems in place to record a request for applicant contact. There is no reason those cannot be mailed out to the beneficiaries as well as sent on to the other office that processes those application.

Mr. **Moody**. So you are directly contradicting the testimony by a minute ago?

Ms. **Fehner**. That is correct.

Mr. **Moody**. Proceed please.

Mr. Levin. Let me just, so we are clear, maybe we can be a bit informal. You are saying that your experience is that when calls are received by people who want to file claims, they are told they will be called back. They are not called back some times until several months later?

Ms. Fehner. That is exactly correct. In fact, last week in East Oakland Social Security Office, had a new manager, a total of 300 telephone requests for applications were discovered and those dated back to February and March of this year.

Mr. Moody. Doesn't their benefit go from that earlier date?

Ms. Fehner. No, it does not. And that is a problem that this legislation is designed to protect.

Mr. Moody. We are taking about disability now, right?

Ms. Fehner. Disability, survivor benefits, on any application for Social Security.

Mr. Levin. So there is no record kept—they are told they will be called back. They are called back months later and then the office tries to date the date of claim as of the later date?

Ms. Fehner. Exactly.

Mr. Moody. Are they structured to do that or are they doing that?

Ms. Fehner. There is no real clarity on when the agency is required to protect the eligibility of a beneficiary concern contacting us. There is a general statement in our manuals indicating we should always attempt to get a application very quickly and that processing time and status shouldn't interfere.

However, there is no statement in the agency's manual saying that every call requesting an application will be recorded in a written form. That is what is required by our regulation. It is not being done.

Mr. Moody. So it is in the regulation that they should be required?

Ms. Fehner. It is in our manuals that people can be protected but there is not a mandate to do it whenever anyone contacts us.

Mr. Levin. And there is no system?

Ms. Fehner. There is no systematic approach to this, that is correct. It is up to the option of the individual and the office processing that claim as to whether they really want to protect this person or not. I called around the country in preparation of this testimony and I got varying answers: "we protect people the last week of the month, we protect them if we think they are going to lose benefits at the end of the application process" or "we don't protect people at all." I have gotten varying answers. The reason for that is our agency is attempting to provide very good processing statistics to justify the reductions in staff we are experiencing. We cannot do the work we are mandated to do with the staffing levels we have right now.

Whole workloads such as post eligibility workloads—

Mr. Moody. You made that statement and I heard you earlier, but what we are talking about could possibly be remedied with some kind of computer, electronic system. It doesn't require necessarily more people. It requires a commitment to do it and find out the most appropriate way to do it.

Ms. Fehner. Correct.

Mr. **Moody**. Why don't you proceed with the rest of your testimony.

Ms. **Fehner**. The other workload area I think needs to be addressed, not every contact with Social Security needs to have a receipt maybe, but the other areas I think are important are the areas where people are overpaid. As she mentioned, people are overpaid because notices of changes in work, marriage, work for Social Security disabled beneficiaries are taken over the phone.

There is no record made of it and they are processed 6 months, a year later. The overpayments date back to the date of first contact and the way we waive those overpayments is to prove that they actually did make an attempt to contact the agency. We make no record of it. Without the beneficiary area having a record of that report to us, they have no way to defend against the overpayment.

Mr. **Moody**. I see.

Ms. **Fehner**. Those sort of notices that effect payment, reports of work by beneficiaries who are both on disability and retirement benefits, reports of divorce and marriage, and reports of changes in income and resources for SSI beneficiaries need to have some sort of record made that the beneficiary can keep and produce at a later date when this overpayment notice arrives.

Mr. **Moody**. The burden of proving when they first contact the agency, who does that lie on now?

Ms. **Fehner**. It is the burden of the beneficiary completely because there is no record made.

Mr. **Moody**. Unless the person sent a registered letter to the agency?

Ms. **Fehner**. And if they happen to keep a copy of it, yes. Most of our beneficiaries don't do that. They don't believe the Government, Social Security in particular is going to mistreat them or cheat them or treat them in a way that is not appropriate.

Mr. **Moody**. They rely on that phone call.

Ms. **Fehner**. They rely and trust us. Our bargaining unit employees are extremely committed to public service. They are nice people. They have done everything they can to produce this service that people see as high quality, very effective and caring. What happens on the other end is not that.

The agency talked about their program for the homeless. Most offices will refuse to get checks for the homeless even though the program circulars indicate there is a program. They have set up this program. They do make outreach to the homeless. They don't do it. It is not happening in the district offices.

We are encouraged not to get checks for the homeless. We are not encouraged——

Mr. **Moody**. Encouraged not to give checks to the homeless in written instruction or just verbal?

Ms. **Fehner**. Verbal instructions. We are encouraged to have them find some other place, some other address to use to receive their checks at when the instructions from the agency direct local offices to allow that office address to be used as a mailing address.

It creates a lot more paperwork again for the agency and they don't want to do it. It is difficult.

Mr. MOODY. The testimony we heard that they work with shelters and other community groups to make sure these checks are transmitted appropriately, you don't agree with that statement?

Ms. FEHNER. We do get periodic information about the services various shelters provide but as far as a regular interaction there isn't any such institutional interaction. They don't haul checks out to the local shelters to pay homeless individuals. In my office I know that is true.

Although the agency addressed in their comments the fact that in the telephone offices people do, supervisors do observe the service on a regular basis, it is a half a percent sample.

They do observe the service given by the telephone service individuals. What the agency didn't address is these telephone answering services frequently function as a messenger to take a message and transmit it to the local office who actually does the work. That is where the breakdown occurs.

The message is taken but not adequately relayed or not worked on for months. So while they are getting correct information there, the information is passed on to another office who may not have time to get to that workload.

Mr. MOODY. The teleservice operators are not giving people any opinions over the phone. They are simply taking the message.

Ms. FEHNER. On situations that require some action to correct a payment, in some situations they are able to take direct action. Some situations they are not. Where they have to pass a message on to an office and say why did Joe get this amount of money because it is not apparent by the computer record. That message goes to a local office who is often backlogged and cannot get to it for months because it is not counted on any production goals.

The 800 number, I think there is a group of press clippings here. You probably have read about the problems with getting earnings records to people who called in about a month ago. These are a series of press clippings on the problems of the earnings records and people attempt to get copies of their earnings records from the administration.

The agency under estimates continually their need for both equipment and manpower to do a job. The 800 number, which is going into effect October 1 is another example of that same sort of thing.

They have a nationwide 800 number. They have increased staffing, net staffing of 28 percent to handle this increased workload that they are going to be having. They want to have a 5 percent busy rate, which means only 5 percent of the callers do not get through to the administration.

However, the records show that the administration's records show between 24 and 73 percent of the callers calling into the Seattle phone service office in the months of April and May of this year did not get through because the phones were busy.

Mr. MOODY. There was a pilot project.

Ms. FEHNER. This was a study done. This shows we need more staffing than the 28 percent net staffing that has been added for the 800 number service nationally. We expect there is going to be similar problems, that people are not going to be able to get to the administration by phone. When they get to the administration by phone our workers are not going to be able to do what is necessary because we do not have sufficient staff to respond.

Whole workloads are stuck in file cabinets and not worked on. The types of workloads are the ones that aren't counted and reporting like continuing disability reviews, correcting records of earnings. Those kinds of things are workloads that are put in file cabinets for years.

Mr. **Moody**. Because they are not counted in production goals?

Ms. **Fehner**. They are not counted in production goals. Goals are the only important thing. People work uncompensated over time in order to service the public or save their jobs and that is how we meet our statistical goals. We only work on those things that the statistics say we have to work on and we do it in a manner that guarantees the work load will get done, the highest volume will get done.

If you have got a very complex case, you are told not to work on that case. You are told to work 10 simpler cases and get them through as quickly as possible. We also have another way to get our work done. We have our managers and supervisors doing reception work.

They meet the public and take social security applications in most offices across the country just because there is insufficient staff to actually handle the work. People are waiting in line for hours to get a number to talk to a social security claims representative. The other way the agency is handling the work is in three offices in the Chicago area where they are having interviews of up to eight disability applicants at a time with one claims representative around a large table similar to this.

The people are herded in together and told to give intimate details about their medical histories all together in a group in order to get this waiting time down and in order to process the claims. You can't tell me that people enjoy telling about their personal illnesses and their work history——

Mr. **Moody**. To seven strangers.

Ms. **Fehner**. With seven strangers, right. That is very bad service and it is dehumanizing and it is antithetical to the mission and goals of social security as I understand them. When I came to work for the agency, I understood that you were to treat other people like you wanted your mother treated. It is not happening today in our offices.

It is not happening because staff is inadequate, because the computer system is not doing what it is set up to do, and because we are working very hard to get numbers. We really are not focusing on the quality of the service that we provide. The other thing that is happening is a lot of these provisions that we are talking about today, the 800 number, the systems changes that are being made, the service delivery changes to a telephone service and one where you come in and make an appointment for 3 months from now, those kinds of things are done without contact with the public, without contact with advocacy groups and without consulting with you, Members of Congress, and without consulting with us, the union.

Nobody has ability to really comment on these changes. Other than this hearing today, there is no input into the great changes that are being made in Social Security service delivery systems. I think input needs to come. I think the American people deserve better service than they are currently receiving from Social Security.

[The statement of Ms. Fehner follows:]

STATEMENT BY

CAROL FEHNER
SECOND VICE-PRESIDENT, COUNCIL 220
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
(AFL-CIO)

My name is Carol Fehner. I have been employed by Social Security for almost fifteen years. I am the Second Vice President of AFGE Council 220 which represents all of the field office employees in the country. I speak for AFGE which represents the majority of SSA employees in the country: field offices, data operations centers, payment centers, offices of hearings and appeals, and field assessment and central office components.

THE AFFECTS OF DOWNSIZING ON PUBLIC SERVICE

On my first day of work with SSA, I was told that the ultimate measurement of public service was to answer one question: "Would you want your mother treated like this?" For the last few years, we have had to say, "No". We have been treating the public as impediments to achieving our statistical goals. While the staff of SSA field offices are courteous, they are not encouraged to provide full service.

Social Security offices now offer appointments and telephone claims service to the public. In fact, in many offices across the country, walk in service is actively discouraged. People who come in to the local offices are told that they can wait several hours to see a representative or make an appointment for another time. We have no objections at all to the concept of appointments. We do object to an elderly person coming in with a translator being told to make an appointment to return later. I have observed this happening in many of the Southern California offices [Corona, San Bernardino, Riverside, Miracle Mile, etc.] that I have visited in the last two years.

We also object to the long waiting lines that I see in the San Diego, California, District Office all day long. In the past few weeks, I have had occasion to pass by the reception area of that office fairly regularly at different times of the day. There has always been a line out to the front door of people waiting to talk to a representative. Other people have checked in and are seated waiting for interviews. We are aware that waiting time is an important statistic to the agency. One way to reduce that figure is to have the public wait in line for considerable time before the reported time is counted.

In the Chicago area, the agency is trying to minimize reported waiting time by assembling groups of eight disability claimants at a time, herding them into a room with a large table and engaging in what they call "claimant participation". Our sources report that the claimants are able to put their names and social security numbers on the forms and little else. The one or two claims representatives in the room proceed to assist the claimants in completing their forms. They ask the customary questions about their medical history, health care, employment history, and ability to carry out day to day activities. This is done in the presence of the other seven people who appeared at the SSA office about the same time!

In addition to the complete lack of privacy, this process results in the claimants proceeding to sit again in the waiting rooms for three to four hours before they see a claims representative to complete the remainder of the application form.

One outgrowth of the telephone claims and appointment systems that is of particular concern to me is the lack of protection for people contacting SSA who wish to file applications for benefits. These individuals are told that someone will contact them about filing their claim and offer a telephone appointment or personal appointment to take the claim. What has occurred due to staff reductions is up to three month backlogs of these requests. There is no control of these "leads".

The delays in processing these leads are not captured in the agency's processing time figures. This creates an incentive to disregard the protection of claimants. In the Corona, California, office, the manager instructed her employees to use the date that the actual claim form was filed instead of the date (up to three months earlier) that the person contacted the agency requesting to file an application. The current law allows only rare retroactivity of applications. If a written record of the claimant's intent to file for benefits is not made, the claimant's benefit begins with the month or day they actually complete their application form. The agency calls these statements "protective filings". In this case, claimants who would have been protected with written proof of their contacts were cheated out of benefits by the agency. These claimants place their trust in SSA to pay benefits when they are due. The agency's mission is to pay benefits to the right person, at the right time, and in the right amount. Failure to protect the eligibility of the claimants back to the date of first contact with SSA is a violation of that trust. The manager made a statement to an employee questioning her directions in this matter indicating that the agency's statistics were more important than money due to beneficiaries.

The employee involved questioned the manager about adhering to agency regulations concerning protecting claimants' filing dates. He also gave proof of the violations to the Inspector General's office. The Inspector General has had this information since August of 1987! The Inspector General indicated that his documents were persuasive and of concern to them. Yet to date, despite repeated requests from the employee and myself, the IG has failed to take any positive action to remedy this abuse. It appears that both the agency and the Inspector General's office have lost sight of our duty to the public who trusts us. We have a duty to pay claimants the amounts they are due and not to cheat them to benefit our statistics.

In a grievance presentation for this employee, we provided the same information to the Riverside, California, District Manager who expressed disbelief and concern about the data shown to her. She indicated that she would take action. To date, she has taken no action.

The beneficiaries here are the losers. They have no proof that they contacted SSA on a particular date and expressed their desire to file an application for benefits. The proof of their contact is destroyed by the time the application leaves the office. If they were to become aware that they had been cheated out of benefits due them, they would have no proof under the current system to substantiate their claim to earlier payment.

In another instance of poor service to the public, the office in East Oakland, California, discovered this last week 300 telephone claims leads dating back as far as February and March of 1988. These cases were not worked on. The employees were given instructions to make one attempt to call the claimants. The backlog of work in the office is too high to do anything else.

In the Seattle District Office, all interview appointments for the last week of the month of September have been cancelled because of the backlog of work in the office. This further delays action on the leads for claims which are continually accumulating. The workload that they have is so out of control that this is the only way they can even have time to look at the claims that have already been filed.

The legislation proposed would certainly give the public a way to protect their eligibility for benefits. We agree strongly that the claimants need a written record of their initial contact with the agency regarding applications for benefits. Frequently when we discover that there is a possibility of protecting a claimant's filing date, the person has no evidence that the date should be protected. Lacking that written evidence, we cannot protect the eligibility.

In actuality, we don't need a study. What is needed is an immediate nationwide implementation of the receipt process to protect the trusting members of the public from the delays and missed payments caused by SSA's short staffing.

As far as feasibility and additional cost, it would be minimal. Current instructions call for a document to be prepared giving the details of the claims lead. A copy of that could easily be sent to the caller. Unfortunately, the staffing for the much touted 800 Number Plan could prove inadequate to do what it was designed for, much less to handle additional tasks.

The 800 Number Plan adds 665 total additional Telephone Service Representatives and back up units to the existing teleservice structure. The 800 Number Plan adds 10 percent more of the population to the callers served by the Teleservice Centers toll-free call areas. At the present service level, that would require 128 more representatives. There are in the 665 total, 175 employees who are available only as a backup unit. These employees normally function as Benefit Authorizers in the Southeastern Program Center in Birmingham. They are "on call" to handle high volume workloads during the hours of 7 a.m. to 7:15 p.m. Birmingham time. That gives a net additional capacity of 28 percent more full time teleservice representatives to provide more adequate phone service.

The 800 Number Plan is predicated on a 200 second average call length with 10 seconds between calls. That works out to about 17 calls per hour for each representative. Currently these same individuals are averaging considerably less calls per hour. The figures run between 3 to 15 calls per hour.

We do not have complete data for all the country on the busy rate experienced by callers to the existing facilities. GAO studies over the past several years indicate that 39 percent of callers to the Teleservice Center have difficulty accessing the centers; 11 percent receive an busy signal, and 25 percent are on hold more than two minutes. A recent study of busy rates done for Teleservice Centers in the Northwest indicated that the lines were busy between 24 percent and 73 percent of the time, depending on when in the month one called and which facility was called.

The plan also calls for a "paperless" process. The idea is that the representatives will be able to do direct keying into the FOSE system and eliminate all paper records. While we have very hard working employees, the FOSE system is not always operational. When I was in a Teleservice Center this month, the system was not operational most of the week. Employees report that in the last month the system has not been available half of the time! One significant problem appears to be the transmission system used to convey data to Baltimore. The 800 Number Plan will place additional demands on this system in order to make appointments for all offices in the country and to give information to callers.

Statistics again are very important to managers. In the Los Angeles, California, Teleservice Center an attempt to use the "paperless" process envisioned by the plan was ended quickly. The reason the center reverted to paper input forms was that the length of call was increasing and the call count per hour went down. These employees are the very same ones who on October 1, 1988, will magically be able to produce 17 calls per hour by direct data input!

SSA's ability to forecast staff and equipment needs is inadequate. The recent debacle over the Personalized Earnings and Benefit Statements demonstrates that clearly. Newspapers nationwide carried articles about the inadequacy of the telephone lines advertised by Commissioner Hardy for personalized benefit and earnings statements. People with automatic redial phones tried over 1,200 times to reach the number with no success.

Staff in Chicago were asked to work 12 hour shifts. Temporary hires are now being used to take requests from the public. The recorders originally used were of such poor quality that over half the requests were unintelligible. New phone lines had to be added immediately to handle the volume of calls coming in. We believe that the agency has reached a point where the system will slowly become mired in its own overburden of work backlogs. There is a critical need for additional staffing.

Other areas in which a record of contact with the agency is vital to the claimant's interest include reports of: work for beneficiaries subject to the annual earnings test, work for beneficiaries who are disabled, marriage and divorce for individuals whose checks may change as a result, reports of income, changes of living situations, and changes of resources for SSI beneficiaries. The reason that this proof is important to protect the public is again related to lack of adequate staff. In a desire to produce impressive statistics for you, the agency has created a system which addresses all workloads on key statistical reports as a priority. Because of this, other work just isn't done. The kind of work which is hidden in file drawers all over the country include SSI reports which could change payments, reports of disabled beneficiaries' employment, and reports of unposted earnings.

While these workloads are not a priority to SSA, they become extremely important to the public when they are overpaid large amounts because the reports are not timely processed. The overpayments can be waived, but the beneficiary must prove that they took prudent action to report the change timely, were unaware of the effect of the change, and cannot afford to pay the money back. Once again, proof of contact with the Administration is vital and needed.

EFFECTS OF DOWNSIZING ON EMPLOYEES

I am the President of Local 2879 and represent employees in 22 offices. In the last year, I have had employees call me because they cannot stop crying in the middle of the office floor. They have reached their limitation of trying to serve the public courteously and effectively and at the same time cope with ever increasing expectations for processing time statistics. They face an ever increasing workload with no relief in sight. In my office, three employees, each with over 13 years of SSA service, have quit with no other employment due to the strain of excessive workloads.

An employee in Idaho threatened to shoot himself if his work became seriously backlogged again. The following year, he had another backlog due to staffing problems. Immediately after a discussion with his manager concerning the backlog, he went home and shot himself. He was a conscientious worker who was committed to public service.

Staffing is so short that managers and supervisors across the country are doing work normally performed by other employees. The Oceanside, California, and Pacific Beach, California, managers frequently act as receptionists and process Social Security number applications. Other management officials process claims applications just to move unmanageable workloads.

What we are finding is that the employees are being polite and helpful to the public while receiving ever increasing pressure to perform a high volume of work. Employees who a few years ago were considered above average performers are now considered merely average. Those who were average employees are now considered unacceptable. Because the agency has chosen to reduce staff and expend considerable resources on items such as the questionable computer systems and the 800 Number Plan, employees are expected to perform at 200 percent of what was expected just three years ago. The FOSE computer system just does not save time. As one long time employee said to me recently, "From all the publicity about the new FOSE system, I thought it would be great and really help us out. Now that I have been trained, I have discovered that it really does little or nothing to help us. It is just a new way to complete application forms!"

Employees are told to "earn" their staffing by increased production. What they and the lower levels of agency management fail to comprehend is that the unit productivity statistical systems are a closed system. By cheating and working harder each year, the employees produce more work. Each year, the time the agency allocates to each unit of work is reduced because of the employee efforts. It then takes that much more work to "earn" staffing each year. Look at the Agency's annual statistical reports going back to the early 1970's as an example of this process in operation.

Naturally, with this sort of pressure to try to get additional staff by working harder, we end up outsmarting ourselves. The situation I referred to earlier of failure to protect the eligibility of claimants in Corona, California, is one of the ways that managers cope with reduced staff, increasing workloads, and computer systems that really don't save time. The employee was put on a Performance Improvement Plan as a result of expressing his concern for the public and a desire to protect their eligibility to benefits. He quit working for SSA in the Spring of 1988 as a direct result of the workload pressures. He had been a satisfactory or above satisfactory employee of SSA for over ten years. He had no other employment lined up, yet his desire to accomplish the mission of the agency and his personal integrity did not allow him to continue to cheat the trusting public.

In attempts to gain control over the massive workloads, employees work uncompensated overtime. In the Los Angeles District Office, the entire staff of around 100 employees commonly miss their two daily breaks and take reduced lunch periods. We have affidavits indicating this same sort of behavior in many parts of the country, such as Georgia, Texas, and Oklahoma. In another office, at least one employee both donates his breaks and a free hour each day. Employees who are under threats of being demoted or fired because of workload delays frequently work uncompensated overtime to try to keep their jobs. Other employees work the uncompensated overtime out of a humanitarian desire to provide assistance to claimants. Whatever the reason for this uncompensated and uncounted time, it amounts to figures that indicate SSA is producing much more per hour than the employees could ever do.

There is ultimately a limit to the ability of a system such as SSA to absorb staff cuts and still function. We provide a service which is intensely personalized. While some of the people we serve may prefer to do business by telephone, not all do. We have a proud tradition of humane and personal service. We believe that our employees in attempting to provide that service have reached the breaking point. There is no more elasticity to absorb further staff cuts.

The provisions of the beneficiary rights bill are badly needed to protect the public from the effects of SSA's staff reductions. The two most important provisions of the bill which I believe must be immediately implemented involve the receipts for phone contacts with SSA and the provision for a thorough review of all earnings posted for each new SSA Title II applicant. On the behalf of all the SSA employees in the country, I wish to warn you that the system is coming apart at the seams. Quick action is needed to preserve personalized service to the people of this country and to avoid the spectre of a mechanized system of service delivery which does not respond to individuals.

In summary, while we are in favor of technological changes which improve service delivery, these systems must be field tested before they are implemented nationwide. The 800 Number Plan has serious shortcomings and has not been field tested. In addition, the approach contemplated by the Administration represents a dramatic change in the way Social Security services are delivered. With the exception of this hearing, these changes are being implemented without public comment, communication with advocacy groups, or consultation with the representatives of the American people, Congress. The American public deserves and demands better service.

Mr. MOODY. Thank you, Ms. Fehner. Ms. Paschall.

STATEMENT OF MARIE JONES AS PRESENTED BY LUCRETIA PASCHALL, MEMBER, AMERICAN ASSOCIATION OF RETIRED PERSONS

Ms. PASCHALL. Thank you, Mr. Chairman, members of the committee. My name is Marie Jones.

Mr. MOODY. I'm sorry. You are Marie Jones.

Ms. PASCHALL. I am Lucretia Paschall making a statement for Marie Jones.

My name is Marie Jones. I believe that a change in the law which requires the Social Security Administration to pay benefits that were not applied for because its employees give bad advice is a matter of simple justice. I urge you to change the law to obtain this justice.

I was divorced in December 1982, after a 40-year marriage. I was going to be 62 in June 1983, and I needed some income. The new law allowed me to collect on my ex-husband's earnings 2 years after the divorce. In May 1983, I called the teleservice center and was told that if I filed at age 62 on my earnings, then I would not be able to switch over to my ex-husband's earnings. My sister called a week later and was given the same information. The manager of my district office at 10910 North Central Express Way, Dallas, Tex., also called in November 1985, and was also incorrectly informed. The fact is that I could have filed on my own earnings at 62 and begun to receive benefits in June 1983.

However, based on this incorrect information, I waited until October 1984 when I went to the district office and filed on my ex-husband's earnings. In November 1984, I received a check for $79. I immediately called the Social Security Administration and asked what this was for and learned that it was for benefits based on my earnings. I could have had this income from June 1983. Also, I could switch over to the higher benefit based on my ex-husband's earnings in January 1985.

I filed protest with everyone and went through the entire legal system. The New Orleans Fifth Circuit Court sided with me. They wrote of Government bungling but they were sad that they were powerless to order payment to me. I wrote every Congressman and Senator. Some never replied; others did little or nothing. In fact, they wasted their time and mine.

My sister learned of the Social Security Claims Manual and went to the office to see it. It is available to the public but the public does not know of its existence except through an attorney. After interrogation by four employees, my sister announced that she was going to report this to Washington and was finally permitted to see the manual. The Freedom of Information Act says she did not have to give a reason for wanting to see it. At the administrative law judge hearing, the judge stopped my sister who came as my assigned representative from speaking after he ordered the recorder stopped. She was not to speak until he permitted her to. She wanted to tell him that she had all the records and that I had been ill for so long. Instead the Judge put an ill person through an agonizing and most uncomfortable time at that hearing. At first there was emphasis placed upon my naming the individual with whom I first spoke in May 1983. About a year ago my sister tried to reach one of the women with whom we had spoken at the teleservice center at one time. We learned there were two with the same last names. First names are not allowed to be given. both of these women admitted that they had been there in May 1983 but when approached with the statement "At that time some erroneous information had been given" both denied that they had ever given out wrong information and then added, "And besides, I would not remember that far back."

Only Congress or the Committee on Ways and Means can change the law to order that this money that is rightfully mine be paid to me from June 1983 to October 1984, approximately amount of $79 a month or about $1,140.

I urge you to change the law so that those of us who were given bad advice by social security may have simple justice.

Mr. MOODY. Thank you very much.

Ms. Schumacher, this is very much in line with your comments. Do you want to elaborate a little bit? You believe the Levin bill should be enlarged to include a provision that if a claimant acted on incorrect information provided by the SSA, he or she would be protected from any penalties or losses that might be protected from that misinformation.

Is this the sort of example you were referring to?

Ms. SCHUMACHER. Yes, it is. No matter what happens, even if a recipient or beneficiary can prove they got bad information, it doesn't make any difference. Unless they contact an attorney and jump through all those hoops, they need to, and for the most part people don't contact an attorney. I think the administration even testified to the fact that they think they are giving the right to representation at the hearing level.

Well the problem is many many claimants on other issues other than disability never ever go to an attorney or any legal representative. At the ALJ level it is probably the first time the administration even addresses it where in fact they have two opportunities to appeal decisions prior to that, the initial decision and the reconsideration decision or waiver decision even, and they are not given the opportunity to or encouraged to find legal advocacies for themselves.

Mr. MOODY. They are not given the opportunity? You mean they are not notified that they may be represented by counsel?

Ms. SCHUMACHER. At the ALJ level is the first time they have to be seen face to face. So, for instance, if a recipient has applied for waiver of an overpayment, that is all done on paper. They send in the form asking for a waiver. The notice may have one sentence saying you have the right to contact an attorney, but I would really encourage the portion of the bill about sending exact information of who to call. It is not being done.

Mr. MOODY. What about their response that staff may be busy, rotating as to who is free at the given time? If you give them the specific name of an individual, that person might be tied up when they call. What was your response to that?

Ms. SCHUMACHER. Are you talking about the fact they say there is a person's name on all notices?

Mr. Moody. They said they didn't think a named person made sense because of staff turnover, who is busy, who is not.

Ms. Schumacher. That is a very big problem. Even as a legal representative when I contact the local district office to work on a particular case, many times it has gone from one CR to another CR to another, to another, to another and nobody knows what is going on.

That is real normal. That is routine.

Mr. Moody. So putting a name of a CR on there might not be very useful, wouldn't you agree?

Ms. Schumacher. I know in our local DO you can't get through to a CR. You call in there and there is only one number that is published for the district office. Those phones are answered by service representatives. They don't anywhere publish the phone numbers of claims representatives.

That is absolutely not done nor given to legal advocates. You almost have to stand on your head to even get the CR to call you back or go up and wait in line for—I have sat in the office waiting for up to an hour just to see a representative.

Mr. Moody. Any of the three of you comment on her statement, the written statement that even though the circuit court judge in New Orleans held in her favor she couldn't receive her money? I don't quite follow why she couldn't be paid if the judge found in her favor.

Ms. Schumacher. Would it have been because there was no written documentation as to the fact—they did not give her a protective filing document. There was no documentation, so they are saying the regulations state she must have had an intent to file an application. It talks about intent and that is still up to the administration to decide if intent is indeed there or not.

Mr. Moody. That is their call, solely. That is solely their call?

Ms. Schumacher. That is right. That is a major problem.

Mr. Moody. Gentleman?

Mr. Levin. Well, this has been illuminating testimony, to say the least. I am curious what Dr. Flemming is going to have to say, having heard this. I am glad at least a representative of the SSA is here to hear specifics. Again, I am sorry that they appear first and you later. Because of time, maybe we had better go on, but I would like us to look into the Marie Jones matter and find out further about it. So I will just leave it at that, Mr. Chairman, so we can move on.

Mr. Moody. I suggested earlier that Congressman Clements' very specific and very powerful testimony be sent to Michael Carozza and his deputy to get their feedback as to how such a thing could have happened. Perhaps we can submit this testimony, Mr. Chairman, and we would let them respond since they couldn't be present. They can respond generically as to how these things can happen, particularly in light of the assurances they gave us before they did leave.

Any further questions from the panel?

Chairman Jacobs. I wonder if the panel could enlighten us in practical terms as to how the provision and Mr. Levin's proposal is working out at the IRS.

Mr. **Moody**. I understand they follow that procedure there; is that correct?

Ms. **Schumacher**. As far as proving this information?

Chairman **Jacobs**. As far as erroneous information from the agents there, as far as the service is concerned, how in practical terms is that nailed down so that it isn't just who hit John?

Ms. **Schumacher**. So it is what? I am sorry.

Chairman **Jacobs**. Learned Hand spoke of parole evidence sometimes as who hit John. I am wondering—I hear you saying it is hard to identify the person at the other end of the phone, A, and B, as to who said what, when it floats out in sound waves to outer space, how you go back and establish that something was represented.

That is my question. Now, the law is as Mr. Levin proposes at the IRS, and I wondered if this panel might have any information as to how it is working there.

Ms. **Schumacher**. The biggest problem, I guess, from my working at SSA was the very foundation that I think Carol and I were discussing a little bit before today, when we are trained as employees, training is like ongoing, and during any given period of time an employee constantly gives out bad information.

They recognize it somewhere down the road that when they are looking at the regulations, that really this was not right. I should have told them this, et cetera. It happens day in and day out. The problem is that the administration is not taking the beneficiary's word for what they understood was said to them.

In other words, the beneficiary hears something——

Chairman **Jacobs**. I understand exactly what you are saying. If you have an intersection accident and whether the light is red or green can be three different opinions, because the third witness will say it was yellow. I am wondering in practical terms how this could be nailed down somewhat.

For example, is it just physically impossible to follow up with a postcard saying we had this conversation and this is to confirm that Ms. Jones can't apply for her own Social Security, but she can apply for her former husband's spousal benefit in 1985, in January of 1985? The postcard goes out.

Is there a way, maybe, to make this workable, or is it necessary? I renew the request for information that I think you probably don't know, as to how it is working at the IRS. If you want to find out what a cowboy will do when he gets drunk, you have to find out what he did the last time he got drunk. I wondered how it was working out over there.

Perhaps Mr. Levin wanted to step out of his official position and be a witness on that point, because I imagine there is some information to be garnered.

Mr. **Levin**. I don't know. I take it you wouldn't know how it is working at IRS. We asked the question, Mr. Chairman, of SSA, about a demonstration project on this, and I found their answer to be tentative at best. It is clear, with all of these claims, that we have to find a way to make sure people are communicated with clearly, and also that there is some record.

Chairman **Jacobs**. I will tell the gentleman from Michigan, I am a former police officer, and the way we handle it in the cop shop is sort of the Nixon approach. There is an audio tape running when emergency calls come in, and if there is negligence on the part of the dispatcher in terms of life-saving emergency equipment not being dispatched in a timely fashion with the correct address and so on, or occasionally when information is faulty about first aid for a victim over the phone, it isn't a question or a matter of opinion anymore.

You go back to that time and date and you play the tape and there it is. I don't know whether that would be workable.

Ms. SCHUMACHER. Didn't SSA testify they would be willing to keep an inquiry for about 3 weeks on the computer? While three weeks doesn't do anything, you know, for a beneficiary down the road. They said they will keep it three weeks and get rid of it.

Chairman JACOBS. In a typical police department you will find—it is a very slow tape and not expensive, and the quality isn't terribly important as long as you can make out what is being said. It hangs around at least for the statute of limitations for a given civil action in tort.

Well, that is on the record. We can kick that around later.

Ms. FEHNER. If I can address the question how the administration would do that, the administration makes a record on the computer. That record can easily be printed out and sent to the beneficiary.

Chairman JACOBS. You mean not a recording, notations?

Ms. FEHNER. Physical input is done on the computer saying "Mr. Jones wishes to apply for this kind of benefit." This is the data.

Chairman JACOBS. The answer is, yes, it is jotted down by the party.

Ms. FEHNER. It is on the computer and can be printed out.

Chairman JACOBS. It is not in the form of a voice recording. In the form of a notation.

Ms. FEHNER. Right.

Mr. JACOBS. So the same misunderstanding as to language, which exists in the mind of the representative of the Social Security Administration would be faithfully and accurately recorded in the note, I suppose.

Ms. FEHNER. Yes.

Chairman JACOBS. That might catch a lot of it, but others, I suppose ultimately judge what do the words mean. In "Alice in Wonderland," the Mad Hatter says, "When I use a word, it means actually what I say it means; no more, no less." So I suppose that would be a matter of interpretation. If you are talking about the doctrine of detrimental reliance or promissory estoppel and whatever idea is reasonably concluded to have been put in the mind of the citizen, if that is an error, that would be the basis for recovery.

It seems to me that a voice recording is the most reliable and it is something that is working very well and in probably more dire situations than generally exist in the SSA.

Thank you.

Mr. MOODY. Thank you all three.

Our next honored witness is Arthur S. Flemming. We are very happy to have you here.

STATEMENT OF ARTHUR S. FLEMMING, COCHAIR, SAVE OUR SECURITY COALITION [SOS]

Mr. FLEMMING. Thank you, Mr. Chairman.

Members of the committee, I am very happy to be here and very happy to have the opportunity of representing the Save our Security Coalition in connection with consideration of H.R. 5250. I have been listening to the testimony this morning with great interest.

I was particularly interested in the dialogue you had, Mr. Chairman, with representatives of the executive branch relative to the need for this kind of legislation. From time to time, representatives of the executive branch said they didn't think it was necessary, that they were doing some things that are called for in this bill.

I would like to use as an illustration the provision in the bill dealing with the homeless situation. We all recognize the seriousness of that problem. Just this past week we had a new report from the national academy of sciences pointing up the seriousness of the problem.

The provision in the Levin bill dealing with homeless calls for an action program on the part of the Social Security Administration in connection with both SDI and SSI addressed to this issue. It calls for a vigorous outreach program on the part of the Social Security Administration designed to identify those who are in the homeless category who have rights under the various laws that the Social Security Administration is administering.

Now, I recognize that the representative of the executive branch said, well, we are already paying some attention to this issue. As an administrator, I would welcome the Congress saying that we feel that one of the considerations that the Federal Government could make to dealing with this problem would be for the Social Security Administration to adopt and put into effect this kind of an action program.

I would welcome it because it would underline the importance of the program as far as everyone connected with SSA is concerned. But I would also welcome it because it would lay the groundwork for requesting additional resources in order to make sure of the fact that that program is carried forward effectively without jeopardizing other responsibilities that the Social Security Administration has.

As you know, I have appeared before the committee a number of times and other representatives of SOS have appeared before the committee a number of times. We feel that at the heart of many of the problems that you are dealing with is the lack of staff. In other words, we are not setting aside adequate funds to employ adequate staff to render the services that need to be rendered.

I think we just have to keep reminding ourselves of that. The fact of the matter is, as far as this particular provision is concerned, you, the committee report or maybe in the language of the bill, I would welcome the Congress saying to the Secretary or to the Commissioner of Social Security, yes, get this action program underway and present a request for supplemental appropriation in order to implement it effectively.

So I feel that legislation of this kind strengthens the hands of the executive branch, because as an administrator, I always welcome the legislative branch saying we like the policy that you are trying to put into effect because that helped me implement that policy, and I used to take advantage of that in the sense of going before the OMB and coming before the Appropriations Committees and saying, look, I am asking for resources, not just to carry out an idea that I have got, but to carry out an idea that has the endorsement of the Congress.

Mr. MOODY. You were struck by the fact that that is an assist they did not wish to have from the U.S. Congress?

Mr. FLEMMING. Yes. I welcome the concern of Congressman Levin, the concern of this committee, because really we are dealing here with issues that if they are not dealt with effectively and with a sense of urgency, gradually undermining confidence in this system, the way in which it is implemented. SOS is very concerned about that, and I think that the passage of this bill would help materially to restore some of the confidence that we need if we are going to have the kind of support for the system that we have to have when some people come in with proposals which, if implemented, would undermine the whole concept of social insurance.

And so, my statement—I am saying that I feel H.R. 5250 is targeted at precisely the types of problems that exist. Section 3 would institute a demonstration project in which SSA would be required to provide receipts to individuals who are contacted by phone.

The project would continue for at least one year at a minimum of three teleservice centers. This will help to assure SSA staff provide accurate information and if they don't, individuals can establish what SSA's role was in providing the incorrect information.

We do, however, want to raise this question. While the demonstration project is being conducted, is there going to be a significant expansion of the teleservice program? If so, should consideration be given to requiring that receipts be provided in all cases where teleservice is involved, accompanied by an ongoing evaluation of the effectiveness of the program.

In addition, we recommend that SSA be required to conduct demonstration projects on the use of receipts in other service areas. Just a month ago I testified before the subcommittee on the issue of SSA's failure to properly credit earnings to workers' records. At that time I indicated SOS support for Representative Gephardt's proposal to create a commission to review the issue, the issue on the earnings record problem.

Section 4 of the bill supplies a missing piece to the legislation. It recognizes there is also a need for individualized relief from the statutory limitations on correction of earning records accidentally set at three years, three months and 15 days. The Levin bill addresses this problem directly. Applicants for benefits would be supplied with notice of the possibility of administration and would be provided with the opportunity to correct earning records regardless of the time limitation.

We feel that the following provisions of the bill respond in an effective way, to very real needs. Section 2 limiting recovery of overpayment, Section 7 requiring more understandable notices, 5 requiring SSA to consider the individual's limitation and assessing fault, Section 9, encouraging people to appeal, rather than reapply.

In addition, there are also on record in support of provisions such as those incorporated in Section 8 which assured that individuals are notified of the right to be represented before SSA.

Those responsible for policy at SSA, have pushed very vigorously towards increasing the use of high technology. We can understand this, all of us. Such a push, however, must be subjected to close scrutiny in order to determine whether people are getting lost in the system. This bill puts Congress clearly on record as supporting the need to personalize the high-tech approach.

We urge you to take steps to pass H.R. 5250 as soon as possible. Thank you, Mr. Chairman.

[The statement of Mr. Flemming follows:]

STATEMENT

BY

ARTHUR S. FLEMMING
CO-CHAIR, SAVE OUR SECURITY COALITION

SUBCOMMITTEE ON SOCIAL SECURITY
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

September 22, 1988
B-318, RAYBURN HOUSE OFFICE BUILDING

Mr. Chairman:

I am very pleased to be here today to testify as the Co-Chair of the Save Our Security Coalition. As you know, S.O.S. is a coalition of over one hundred organizations concerned about maintaining the fiscal integrity of the system and about the way in which existing laws are implemented.

Over the past eight years, we have seen a steady decline in the capacity of the Social Security Administration to provide services. S.O.S. has testified about these problems on a number of occasions in the past. Today I appear before you to urge passage of H.R. 5250, the "Social Security Beneficiary Protection Act of 1988," introduced by Representative Levin.

H.R. 5250 is targeted at precisely the types of problems that persist at SSA. Section 3 of H.R. 5250 would institute a demonstration project in which SSA would be required to provide receipts to individuals who contact it by phone. The project would continue for at least one year at a minimum of three teleservice centers. This will help to assure that SSA staff provide accurate information and, if they do not, that indivudals can establish what SSA's role was in providing the incorrect information.

We do, however, want to raise this question: While the demonstration project is being conducted is there going to be a significant expansion of the teleservice program? If so, should consideration be given to requiring that receipts be provided in all cases where teleservice is involved accompanied by an ongoing evaluation of the effectiveness of the program? In addition, we recommend that SSA be required to conduct demonstration projects on the use of receipts in all service areas.

Just a month ago, I testified before this Subcommittee on the issue of SSA's failure to properly credit earnings to worker's records. At that time, I indicated S.O.S.'s support for Representative Gephardt's proposal to create a commission to review the procedures and issues surrounding the earnings record problem. Section 4 of H.R. 5250 supplies the missing piece to the equation. It recognizes that there is also a need for individualized relief from the statutory limitation on correction of earnings records, currently set at three years, three months and fifteen days. The Levin bill addresses this problem very directly: applicants for benefits would be supplied with notice of the possibility of omissions and would be provided with the opportunity to correct earnings records regardless of the time limitation.

We feel the following provisions of the Levin bill respond in an effective way to very real needs:

-- Section 2 limiting recovery of over-payments;

-- Section 7 requiring more understandable notices;

-- Section 5 requiring SSA to consider the individual's limitations in assessing fault;

-- Section 9 encouraging people to appeal rather than reapply.

In addition, we are also on record in support of provisions such as Section 8 which assure that individuals are notified of the right to be represented before SSA.

Those responsible for policy at SSA have pushed toward increasing the use of high technology. This we can understand. Such a "push", however, must be subjected to close scrutiny in order to determine whether people are getting lost in the system. This bill puts Congress clearly on record as supporting the need to personalize the high tech approach. SOS urges you to take steps to pass H.R. 5250 as soon as possible.

Mr. **Moody**. Thank you for a very excellent testimony.

Mr. Levin.

Mr. **Levin**. Well, just briefly, as always, you are not only eloquent, but forceful. Thanks to you and to your organization for helping us on the development of this bill. Let me just leave it at this.

I think you describe it well. There are new automated systems being inserted. At the same time there is a diminution in personnel, and what I hope this bill will do is to find out how those two factors are interrelating. We obviously aren't going to mark up this bill and pass it this year. But the purpose of the bill and the purpose of the hearing are to open up Pandora boxes and find out what is really in there.

I am concerned by the testimony heard earlier and we will listen to the testimony with interest from the next two panels. But I think we are determined to find out what is actually going on, and whether people are being lost and in what numbers and why. So thank you very much. You have blazed the trail here. We will try to keep up with you.

Mr. **Flemming**. Thank you, Congressman Levin.

Can I make a suggestion on the homeless issue? Would you consider the possibility of a concurrent resolution on expressing the views of Congress on that even before recess? I am concerned about the fact that here is that issue out there getting worse, not better, and yet it is in the major issue even in the campaign at the present time.

People do not seem to be addressing it. It seems to me if the Congress would ask or pass a concurrent resolution which would contain the substance of what is in the bill, that it would really help to give those who are deeply concerned about this a shot in the arm.

Mr. **Moody**. Let me ask one question. Have you shared your thoughts of this testimony with the Appropriations Subcommittee under Mr. Natcher. They control the budget of social security, the appropriations to them. We don't really do that in this subcommittee. Some of your comments would be very germane to their deliberations.

I would encourage you to share this with Mr. Natcher and his people.

Mr. **Flemming**. We will be happy to do everything we can to persuade the Appropriations Committee that they should take action on this fundamental issue of staffing. I understand over on the Senate side we have been more willing to move on that than the House Appropriations Committee has been, and I understand that there there is some hesitancy because of the feeling that that would put the Congress in the position where it was telling the executive branch in effect how to staff up.

Well, I feel that the legislative branch certainly has an obligation to make sure of the fact that the executive branch isn't overstaffed and it performs that function. I have found over the years very effectively. But I think it likewise has an obligation to make sure of the fact that it isn't understaffed.

When I was Secretary, I used to appear before a Subcommittee on Appropriations, headed by Congress—the late Congressman Fogarty of Rhode Island. He was constantly producing me as to whether or not we were understaffed at the National Institutes of Health.

I would tend to stay within the boundaries of the Budget Act and I would tend to agree with him on that and the result was that National Institutes of Health got shot in the arm as a result of increased appropriation. I feel there is that obligation on the part of the legislative branch.

When it performs that obligation, it renders a tremendous service. We have got the money to do it. The percentage of the funds available to SSA that are used for administration, as you know, are very low. They are so low that we should recognize it as a problem. Some people point to it with pride. I don't. I point to it as evidence of the fact that we are not doing the job that we should be doing in terms of rendering services to our beneficiaries. So we will be delighted to work with you, with the Appropriations Committee on that issue.

Mr. Moody. Thank you very much.

We now call before the committee the next panel.

STATEMENT OF EILEEN P. SWEENEY, STAFF ATTORNEY, NATIONAL SENIOR CITIZENS LAW CENTER

Ms. Sweeney. Thank you. SSA testified today about the so-called improvements that it has made in service. What is most disturbing is the manner in which SSA claims that the changes are actually intended to benefit the claimant or recipient. SSA's own documents and the results indicate that SSA has little concern for maintaining, much less improving service.

H.R. 5250 is a very important piece of legislation. It will make significant real improvements in how people are treated. In my written statement, I discuss problems which H.R. 5250 will involve. I would like to bring two additional problems at this time from Pandora's box to the subcommittee's attention.

First, there is now very clear evidence that SSA is improperly requiring disabled people to go home and complete their own applications. Last year SSA cut its workload. They called the form self-help and sent the people along to complete them by themselves.

They claimed that the new policy would benefit claimants because they would be able to describe their problems in their own words. They said the process would "enhance, not diminish the accuracy of reporting." It would also result in an efficient more pleasant interview by reducing the time by about 20 minutes.

In September 1987, the Assistant Regional Commissioner for Assessment in Atlanta issued a report on the use of the self-help forms. She indicated that SSA used these forms in 64.3 percent of the cases.

She found that only one out of every five claimants using the self-help form provided complete and descriptive information. They had high school or college educations or work experience that involved writing or forms completion. She also said the claimants alleging mental impairments are completing their own forms. This wasn't bad enough. Self-help actually added time to the process.

According to the study, self-help adds an average of 9.8 days to process. Supplementation by SSA field offices is over 7.6 days with a range from one to 29 days. She also noted that over half of the forms that should have been supplemented by SSA were not.

There is now clear evidence that this outrageous policy is not beneficial to claimants. This subcommittee should act to require SSA to assist people in applying to the full extent the person needs assistance. This will vary with the person, obviously.

Some people need no assistance and that is fine. There should be a specific requirement that SSA must assist any person applying until it is established that the person doesn't need assistance. The rule is the reverse. The results are spelled out in the Atlanta memo.

Second, at the subcommittee's hearing on earnings record issues, Dr. Flemming raised concerns about what SSA is doing to discourage aliens seeking amnesty from correcting their earnings records. This is appalling and tragic. To apply for amnesty an alien must secure a new social security number.

None of them have the same number they used to have. The person is expected to use that new number. As a result, all of the aliens seeking amnesty will have their earnings record up until the day they apply for amnesty on a different number from the one they are currently using. Regardless of how they originally secured that number, their legitimate earnings records are credited to the old number.

They have filed FICA taxes like any other working person in the United States. They will need those earnings credited to get decent Social Security benefits or to assure survivors are protected if they die. There could be 1.5 million amnesty aliens who need to request correction.

SSA set about creating many obstacles, to make sure very few would seek correction. These steps are spelled out in the documents which I have submitted to the subcommittee.

I have more documents, if you would like them. SSA told their staff not to suggest to aliens that they should have their earnings records corrected. Second——

Mr. LEVIN. Let me break in.

Mr. MOODY. Mr. Levin.

Mr. LEVIN. What is the evidence of that.

Ms. SWEENEY. I have documents saying that—if they ask, we will correct them. Do not suggest to people they need to have the earnings records corrected.

Mr. MOODY. To go back for a second, the law said amnesty law said that they would be required to start a new social security number.

Ms. SWEENEY. My understanding is that when a person goes to INS, they have to get a new Social Security number; they actually file the application at INS and it is sent to SSA.

Mr. MOODY. They aren't allowed to use the new number by law or statute or administrative rule.

Ms. SWEENEY. I don't know that part. I know they all have them.

Mr. MOODY. Find that out.

Ms. SWEENEY. Second, SSA issued a ruling which makes it harder to get persons to get SSA to correct the record. It was issued in 1987. The documents which I have submitted clearly indicated that even though there is no reference to the amnesty aliens, it was designed to reduce the number of aliens who would seek corrections.

Mr. MOODY. What do they do to make it harder?

Ms. SWEENEY. Change the burdens. You have to provide more proof now.

Mr. MOODY. Aliens or everyone?

Ms. SWEENEY. Everybody.

There are documents from the Deputy Commissioner to Dorcas Hardy, the Commissioner, on a weekly basis indicating that this ruling is about to come out. The title of every memo is status of alien issues. It is clear this ruling was designed to hit or target this population.

Third, in case anyone actually figured out for himself he should request correction of the record and in case he could meet the burdens of the new ruling, HHS let it be known it intended to prosecute aliens who used illegal numbers in the past.

This assured no alien would risk coming forward.

Mr. MOODY. What is an illegal number?

Ms. SWEENEY. I doubt many aliens got their numbers legally. All the people who worked who were aliens who needed the number to work had to prove as part of amnesty that they have been here for a continuous period of time. Those people had numbers that they secured somehow.

Basically, Congress must have recognized that when they said they are going to give these people amnesty. Unless Congress intervenes, SSA is making sure that a lot of people will end up poorer when they become disabled or retired. They are going to come to Congress as recipients somewhere in the system even though they are entitled to Social Security if their work records were transferred to the proper number.

Mr. MOODY. You are an attorney. What is the definition of an illegal number of social security?

Ms. SWEENEY. Under the Act you are not allowed to illegally secure a number. I think that most aliens who had numbers got them so they could work, got them through some means: they made application to SSA under a different name or they used somebody else's number in order to be able to work in this country.

They didn't do something that was right. They obviously came to this country and were desperate trying to support their families. And that was part of the package, as far as I am concerned, that Congress looked at when it said we are going to let these people stay and we are going to allow them to become citizens of this country. All these people have work earnings on numbers which are incorrect and can't get them transferred to the proper one.

Maybe a few have legal numbers, but my guess is the vast majority didn't get their numbers in an above-board fashion. They paid taxes like everybody else on their earnings.

Mr. MOODY. I don't remember how I got my social security number.

Ms. SWEENEY. Your mother probably got it for you?

Mr. MOODY. My first job, there was one. How do you start off by getting a social security number.

Ms. Sweeney. You apply at the local Social Security Office.

Mr. Moody. You have to go in, the employer doesn't do it for you?

Ms. Sweeney. No.

Mr. Moody. You have to physically present yourself.

Ms. Sweeney. You do. You can also borrow one. One of the problems that existed for years, up in Baltimore at SSA, they have this wonderful room of historical information and on the wall is a story about this, I think, a wallet maker who had a wallet in his window for years that had his secretary's social security card in it with her number on it.

People who walked by adopted that number. It took 30 years to get that number out of circulation. People don't realize that the number is unique to you, you know. They don't understand—they have to have one to get a job, but they don't understand the implications of how it runs to them and nobody else is supposed to have it.

I think that is a common problem, particularly if you are new to the country.

Mr. Moody. You never——

Ms. Sweeney. I don't think you actually go in there and make misrepresentations. You get a number somewhere, borrow it, that you use. So these people have these numbers with their earnings on them and they need to be straightened out. The Social Security Administration has avoided this workload by basically letting the word out in the community that they are going to prosecute people. It has been very effective.

There have been people that told other advocates that—you do not go in and ask for this information to be changed because you could be out of here, out of the country in no time. It would defeat their chances of getting amnesty if HHS decides to prosecute them on a criminal charge. People are sacrificing their work records and their entitlements to benefits down the road to stay in this country. It is outrageous.

Mr. Moody. Thank you.

Proceed.

Ms. Sweeney. The only thing I would like to add is that I found SSA's testimony somewhat surprising. H.R. 5250 is a wonderful bill, I think. A lot of thought went into it by your staff and the subcommittee. It is not micromanagement of the agency, not as detailed as somebody like me would like to see it be, and yet it would make a big difference and send a message to them. They are scared in some ways that it would be legally enforcible. If they don't assist a person on overpayment issues, somebody could go to court and say you have got to, Congress told you what the law is.

Right now it is great for SSA. They can be nice if they want to be. They aren't frequently. A lot of people are victimized by very bad choices in the area of discretion, and we really need legal handles like the provisions in this bill. When the handles exist, they eventually come in line.

Mr. Carozza made a big deal about the fact that they are providing notices to the blind in SSI. That is wonderful, but it didn't happen because Social Security Administration decided they were going to do it because Mr. Matsui for two or three Congresses, tried to get that passed and it was in 1987 that provision was passed. The Social Security Administration is saying they do it. Of course, because the Congress made them do it. That is the only way real changes seem to happen at Social Security Administration. Ones that you can count on being there tomorrow, the ones they don't just promise at congressional hearings. That only happens when Congress makes them do something.

I think it would be fantastic if H.R. 5250 can pass this year or next year, as soon as possible.

Thank you.

[The statement of Ms. Sweeney follows:]

TESTIMONY OF EILEEN P. SWEENEY, STAFF ATTORNEY, NATIONAL SENIOR CITIZENS LAW CENTER, BEFORE THE SOCIAL SECURITY SUBCOMMITTEE OF THE COMMITTEE ON WAYS AND MEANS, SEPTEMBER 22, 1988

My name is Eileen Sweeney. I am a staff attorney at the National Senior Citizens Law Center (NSCLC). I appreciate this opportunity to testify today.

NSCLC is a national legal support center. We assist legal services and aging advocates in addressing the legal problems of their low-income elderly and disabled clients. I work exclusively on Social Security and SSI issues.

It is my expectation that the message from all witnesses appearing here today, except the Administration, will be that the picture is even more bleak now than it was a year ago when this Subcommittee held hearings on staffing cuts. Today, SSA has testified about all of the "improvements" in service which it has made. What is probably most disturbing is the manner in which SSA implements its alleged "improvements." In a most cynical, manipulative fashion, SSA claims that the changes actually are intended to benefit the claimant/recipient. Yet, SSA's own directives and the results clearly indicate that SSA has little, if any, concern for maintaining, much less improving, service.

The provisions in the bill which Representative Levin has introduced, H.R. 5250, will make significant, real improvements in how people are treated and will help to return SSA to its roots: service to the American public in securing any Social Security and SSI benefits to which they are legally entitled. As the remainder of my testimony establishes, the sooner these improvements can be made, the better.

While severe damage has been done at SSA, it is not irreparable.

Basically, through irrational implementation of staff reductions and the failure to hire competent new staff and to promote from within, this Administration has gutted the morale of the staff and eliminated their once-held pride in being an SSA employee. Because staffing is so poor and the patterns, if there are any, are so irrational, offices go without clerical staff and claims representatives. Those who are left find themselves having to "do more with less." But, it's not more service with less people, it is more of everyone else's work, like opening the mail and tracking files. SSA then steps in and, instead of providing adequate staffing, it devises "shortcuts" and obstacles to service. And, by emphasizing the collection of data on only certain activities, it assures that other critical activities are not done but go unnoticed by Congress and the GAO.

Below is a discussion of some of the service problems at SSA.

1. "Self-help" applications for the disabled

Last year when I testified before this Subcommittee, I presented SSA memos which described SSA's then-new policy of sending disabled people home to complete their applications.[1] The SSA memos claimed that this dramatic change in policy would benefit claimants by permitting them to describe their problems "in their own words" and would "enhance, not diminish" accuracy of reporting. It would also result in "an efficient and more pleasant interview" by reducing the interview time by about 20 minutes.

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[1] See Testimony of Eileen P. Sweeney, "Staffing Reductions, Service Delivery, And Management of the Social Security Administration," Hearing before the Subcommittee on

Not surprisingly, an in-house SSA study which evaluated this process in the Atlanta region concluded that it was not working. In a memo dated September 17, 1987[2], the Assistant Regional Commissioner for Assessment in Atlanta, Maxine McNutt, reported that SSA used the "self-help" approach in 64.3% of the cases. Of these, 20% should have been excluded under regional guidelines because they had a mental impairment or appeared concerned or apprehensive. "Claimants alleging mental impairments are completing their own SSA-3368." "Only one of every five claimants using self-help provided complete and descriptive information... These claimants had high school or college educations or work experience that involved writing or forms completion." And, "over half of the SSA-3368s that were not supplemented [by SSA staff] should have been." In addition, almost 25% of the self-help cases indicated "potential filing date problems." In other words, the filing date listed was later than the date the person first attempted to apply. This results in a loss of benefits. And, lest SSA persist in arguing the illusory benefits to the claimants, the study found that "self-help adds an average 9.8 days to processing." Supplementation by [SSA field offices] adds another 7.6 days, "...with a range of one to 29 days."

Despite these very disturbing findings, SSA continues this process.

2. Teleservice: the need for accountability

In the past year or more, SSA has made a dramatic shift to "teleservice." Subject to a couple major qualifications, there is nothing inherently bad about the use of an "800" number. However, use of such a number should be voluntary. And, it is critical that the staff answering the phones be among SSA's most expert personnel, not its newest trainees.

There is every indication that the "800" number/teleservice system is not really there for the "convenience" of the caller. It is really just one more obstacle which a person must get through in his/her effort to get service. The people staffing the phones seem only able to answer the simplest questions. They are not trained to address the frequently tough questions. Or, worse, if they are, they give out incorrect information. The Commissioner is pressing teleservice upon many who would prefer a visit to the office. Her goal of 50% of service being provided by teleservice in 1988[3] necessitates forcing people to "choose" the option that does not suit their needs.

Social Security, Committee on Ways and Means, Serial 100-20, April 2, 1987, p. 252 and exhibit at 266.

2. A copy of this document has been submitted to the Subcommittee.

3. See, for example, "SSA Management Newsletter," Vol. XXIII, No. 19 (November 16, 1987), page 3. "...[S]ervice to the public has improved through expanded use of the telephone (she [Hardy] is confident that SSA will reach its goal of 50 percent teleclaims next year)..." (Copy submitted to Subcommittee.)

Advocates are reporting the problems which they are having in getting post-eligibility issues resolved in their clients' cases. They place a call to what they think is the local office number, only to discover that all calls are now being taken at a teleservice center. The people they speak with are not conversant in the type of detailed problems they are addressing and have no one to whom to refer the advocate. There is concern that if advocates can not secure the information or action needed to resolve an issue, it must be far more difficult for an unrepresented person to successfully survive the process.

In addition to the problems getting the call through, telephone service also makes it much more difficult for the person to ever prove s/he actually contacted SSA, whom s/he spoke with and what was said. The provision in Section 3 of H.R. 5250, requiring SSA to utilize receipts on a demonstration project basis, should help re-establish accountability in the process. And, it makes good sense: if the Commissioner wants to bring in high technology, often in ways that are not particularly beneficial to those served by SSA, at a minimum, she should also be required to provide some of the finer features of high tech teleservice, like computer-generated receipts.

While the demonstration project is an excellent idea, it would be helpful if it could be implemented nationwide immediately. There can be no question that the need exists. Congress could then review it after it had been in place for a year or two to determine if changes were needed, allowing the project to continue while the review was done.

3. Electronic Funds Transfer (EFT) "short cuts"

Until recently, SSA's policy was that direct deposit of checks to bank accounts by electronic funds transfer (EFT) was a convenience available to the beneficiary. In April, 1988, SSA changed its policy.[4] Calling it a "significant change," SSA indicated that "Direct deposit is now the preferred method of payment for initial claims." To facilitate the choice of EFT, SSA has eliminated the requirement that the "SF-1199A" (the direct deposit sign-up form) be completed. This means that the applicant or beneficiary no longer takes the form to the bank for completion of critical information, such as the exact account number as it appears in the bank's computer system. And, "For those beneficiaries already receiving benefits, direct deposit actions can be taken based on a phone call." Id. The potential for abuse here seems significant. For example, what guarantee is there that the caller is really the beneficiary and that the account is solely that of the beneficiary's?

SSA staff now record the information regarding the precise account number. They do this based upon looking at information which the person brings into the office (i.e., check book, pass book) or based upon the information which the person provides over the telephone. Without the banks' involvement, the risk of incorrect numbers being recorded is very great.

It appears that at this time, due to the new policy and SSA's failure to have the banks complete the SF-1199A, there are payments being returned to the Treasury by banks because they include incorrect account numbers. This results in great hardship for beneficiaries who must file lost check reports and wait for another check to be issued.

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[4] SSA Program Circular 02-888-OP (April 21, 1988).

So, once again, a step which could be viewed as beneficial to applicants and beneficiaries, is really a major disaster because it is being implemented in a slipshod, ill-conceived fashion designed to meet only the goal of experiency at the expense of service.

4. Reapplications in lieu of appeal

As this Subcommittee is aware, there is a very serious problem with people reapplying rather than appealing when they are denied benefits. This is because SSA's notices inform the reader that s/he can always reapply rather than appeal. However reapplying results in loss of benefits and, where the recency of work test is at issue, even prospective eligibility may be barred on a later application. At least four courts have held that the SSA notice violates due process. See Dealy v. Heckler, 616 F.Supp. 880 (W.D.Mo. 1984); Butland v. Bowen, 673 F.Supp. 638 (D. Mass. 1987); Aversa v. Secretary of HHS, 672 F.Supp. 775 (D.N.J. 1987); Graves v. Secretary, No. 82-3886 (M.D. Tenn. 1983).

The problem is not solved simply by correcting the SSA notice: SSA staff must also change their tune. Jessica Braginsky, a legal services staff attorney in Brooklyn, has stated that the problem is prevalent in her client community:

> "This is especially common because many of our clients are illiterate and rely on claims representatives to orally advise them of their options. One of my clients had filed four times consecutively before he sought a reconsideration or a hearing because when the claims representative at his district office told him his rights he did not understand what the word "appeal" meant and no one explained it to him. Further, many of my clients suffer from mental disabilities which make them less discerning when erroneous information is given to them.
>
> "The erroneous and misleading information and advice given to our clients by claims representatives has cost some of my clients years of Social Security disability benefits."

The problems of two Louisiana residents clearly illustrate the inequities in SSA's current policy:

> "Mr. D" applied for disability benefits three times. After the third reconsideration denial, a hospital social worker told him about legal services. The ALJ refused to reopen his earlier applications, despite evidence of mental retardation and inability to understand SSA's notices. After he died, the Appeals Council reversed and permitted reopening.
>
> "Mrs. A" was an illiterate 60 year old woman who had a severe heart condition and arthritis in her back and hands. She was turned down on several occasions, but she did not request a hearing because she felt she would have to have an attorney to do so and she was not aware of free legal assistance. She made several new applications, and filed for reconsideration. On the last application, her reconsideration denial arrived two weeks before she died. Her widower learned about legal services and they filed an appeal for him.

This behavior by any federal agency is inexcusable. It is particularly outrageous when carried out by SSA, the agency intended to assist elderly and disabled individuals in securing the benefits to which they are legally entitled.

§9 of H.R. 5250 would require SSA to provide a clear explanation of the consequences of not appealing. In addition, if the claimant demonstrates that the reason s/he chose to reapply rather than appeal is that SSA provided incorrect, incomplete or misleading information, the provision would bar SSA's use of the doctrine of *res judicata* in adjudicating the later application. This provision would make a big difference. It would assure not only that SSA provided accurate written information but it would provide SSA with incentive to provide accurate information orally as well. Coupled with §8 of H.R. 5250, regarding representation of claimants, this would significantly improve the chances that disabled individuals would receive full adjudication of their cases.

5. Representation of claimants

This past summer, I was involved in a training for approximately 85 of the leading legal services advocates who practice in the area of Social Security and SSI. They described in great detail the frustrations of advocating before SSA. Before they can even get to the substantive or procedural barrier that is causing problems for the client, they must first go through repeated, endless rituals of re-establishing their credentials as the appointed representative of the client. Originally, the advocate has the client sign an "appointment of representative" form. This is then sent to SSA and put in the person's file. The file then moves throughout SSA's system and often can not be found anywhere. When the advocate calls to inquire about the status of the client's case, the local office and, more recently, the teleservice office say they do not have the file and, because they have no record of the appointment of the representative, they don't have to talk with the advocate. It is a very convenient way of avoiding the substantive issues in the client's case. The advocate then secures a new form and the process begins all over.

Section 8 of H.R. 5250 addresses this problem very simply: SSA would be required to record the representative's identity in its computer system. That way, regardless of where the file is, the local SSA office would know that the advocate is authorized to represent the person simply by checking the computer.

Section 8 also requires better and more frequent notice of the need for and availability of legal representation. SSA's data shows that those who are represented fare better in the process than those who are not. This is largely because the advocates who work in this area are expert in the complexities of the law and take the steps necessary to collect the evidence required to establish eligibility. SSA and DDS staff simply do not do as comprehensive a job. They need only enough evidence to support a denial of benefits. Section 8 would both improve the quality of decisionmaking at SSA and increase the likelihood that eligible individuals will receive the benefits to which they are legally entitled at the earliest possible time.

6. Collection of overpayments

When SSA determines that a Social Security beneficiary has been overpaid, it sends the person a notice which says the person owes SSA $_____ and SSA intends to withhold the person's full benefit for as many months as it takes to recover the overpayment.[5] If the person comes in and asks SSA to recover at a lower rate, it may. However, because the person is so upset about losing all income s/he will often agree to withholding of an amount that is far more than s/he can live without. Incredible hardship therefore results for all those who fail to go in to the office at all (100%) and those who persuade SSA to take only 25% or 50% of their monthly income.

In 1984, Congress recognized the inequities which result from these types of procedures in the Supplemental Security Income program. As a result, 42 U.S.C. §1383(b)(1)(B)(ii) now limits the rate of recovery to no more than 10% of the person's monthly income. This limitation does not apply if there has been fraud, willful misrepresentation, or concealment of material information.

§2 of H.R. 5250 would require the Secretary to recover overpayments based on a schedule which will not cause undue financial hardship, based upon the individual's circumstances. This will go a long way toward eliminating the most egregious abuses and hopefully permitting the system to be more rational.

While the current proposal would make a significant difference, it would be simpler if the rule was the same as in the SSI program. If this is not possible, then it would be very helpful if the 10% rule was included for cases in which the person was also eligible for SSI or state supplementation so that SSA can not reduce a person's benefits below the SSI level minus 10%.

Inclusion of this 10% rule (where the person is SSI eligible) would help to at least partially eliminate a serious inequity which currently exists. From the beginning of the SSI program in 1972 until 1982, the Secretary never counted as income in SSI the amount that was being recovered as an overpayment in Social Security (or any other benefit program.) In 1982, SSA completely reversed this policy, saying that it would count as available income the amount that was being recovered as an overpayment in another program.[6] The result is that SSA can withhold all of a concurrent beneficiary's Social Security benefit and leave him with just the SSI portion even though under SSI, if the overpayment has been in SSI, SSA would have been limited to 10%. If the Congress placed a cap on the rate of recovery in these cases, it would result in far more rational and equitable treatment of concurrent beneficiaries. It would also help those who by virtue of recovery of an overpayment in Social Security could actually be disadvantaged worse than under the SSI 10% rule and, as a result, end up with an actual monthly income well below the SSI benefit minus 10%.

As this Subcommittee also has jurisdiction over the Railroad Retirement program, it would be very helpful if it made the same statutory changes for railroad benefits. It is my understanding that right now, the Railroad Retirement Board thinks it only has authority to recover overpayments from benefits by withholding 100% of the check.

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[5] SSA has admitted to this Subcommittee that it's policy is to withhold 100% of the benefit. Questioning of Nelson Sabatini, SSA, by Representative Jacobs, "Social Security Administrative Issues," Hearing Before the Subcommittee on Social Security, Committee on Ways and Means, Serial 97-83 (September 23, 1982), pages 206-209.

[6] Proposed regulations, 47 Fed. Reg. 6885 (February 17, 1982); final regulations, 47 Fed. Reg. 13793 (April 1, 1982).

7. Standard for Determining Good Faith

I am always amazed at the calls I receive in which advocates report that SSA is claiming that their mentally retarded, illiterate, or non-English speaking client "should have known" that some action SSA took (or didn't take) was wrong and that s/he is therefore not "without fault" in creating an overpayment. The absurdity of SSA's position in these cases is just that more bizarre when one considers SSA's mission and the people it is intended to serve. By applying an "average person" test to each individual and ignoring each person's limitations, SSA is ignoring the needs of the people it is supposed to serve.

Section 5 of H.R. 5250 will correct this behavior by requiring SSA to account for a person's limitations in assessing fault and good faith.

8. Assistance to the Homeless

In recent years, SSA has given lip service to the idea that it is committed to serving the homeless. This is fashionable, so it is not terribly surprising. But, in terms of actual assistance and accommodations to the unique needs of homeless individuals, SSA has done very little. Cuts in local staffing has eliminated the ability (as well as the interest) to do even limited outreach. Calls I have received indicate little willingness to assist the elderly confused individual who can not recall his/her Social Security number. In addition, despite requirements that SSA offices have checks available for immediate payment, I am told the dates on the checks are stale and SSA has not replenished the stock in years.

§6 of H.R. 5250 would require SSA to have a definite program to assist the homeless to secure the benefits to which they are legally entitled. This should help to focus SSA on its obligations to these individuals.

9. Understandable Notices

Under the direction of Acting Commissioner Martha McSteen, SSA undertook to learn how to write notices in simple, understandable English. Some progress has been made. However, the vast majority of notices are still written in language that is impossible to decipher. In addition, they almost never indicate the name of the person in the system who is responsible and how that person can be contacted. The person receiving the notice is left with the often impossible challenge of identifying what the problem is and what action SSA plans to take. The first call is now to teleservice, where they know virtually nothing about anything.

§7 of H.R. 5250 requires not only that the notices be simple and understandable but also that they contain the name, address and telephone number of the person who is responsible. This will dramatically improve the chances of most people to act in their cases in a timely and informed manner.

§7 also requires the Secretary to provide, to the extent feasible, notices in both the native language of the individual and English if s/he resides in an area which has a substantial number of people who are likely to speak a language other than English. This would be very beneficial to many, including Spanish-speaking individuals.

10. Earnings Records

There are really two sets of problems here. The first are problems related to SSA's failure to properly credit earnings to records. These are the issues which were discussed at the Subcommittee hearing in August. §4 of H.R. 5250 is focused on the problems which individuals face as a result of SSA's practices. It is well-designed to assure that current procedural obstacles in the system do not prevent individuals from correcting their earnings records.

The second problem has received less attention: SSA appears to have devised a system for assuring that aliens seeking amnesty will never receive the benefit of their prior work records. First, under the amnesty law, all aliens seeking amnesty were required to secure a new Social Security Number (SSN). Second, early in the amnesty process, SSA told its staff not to tell aliens that they needed to have their earnings records transferred to their new numbers.[7] It was clear SSA wanted to assure that there would be no workload increases as a result of alien requests. SSA's own staff was estimating that "over one-half of the newly legalized aliens, perhaps 1.5 million people, would bring an earnings problem to SSA's attention."[8]

So, in addition to not telling people of the need to correct their records, SSA devised other ways to limit the workload. The Regional Commissioner for Kansas City stated: "SSA is also examining ways to tighten development procedures and permit flexibility to minimize the workload impact..."[9] SSA issued Social Security Ruling 87-17, shifting more of the responsibility to the individual to provide evidence that the record is not correct. While there is no reference to the amnesty aliens, other documents make clear that this was the target population for the ruling.[10]

To make sure that aliens would not risk seeking earnings record corrections, HHS also let it be known that it intended to prosecute the cases "of illegal immigrants who use fradulent Social Security numbers even if they have received amnesty."[11] The result has been incredible fear in the alien communities of coming forward. To protect their chances of securing amnesty and to avoid the threatened prosecution, aliens are not seeking corrections of earnings records. The results are quite obvious: (1) SSA has succeeded in virtually eliminating what should have been a massive workload, and (2) there are going to be hundreds of thousands of aliens who are granted amnesty who will never receive credit for the taxes they paid into the Social Security system for many years. This will result in the loss of significant benefits to them upon retirement or if they become disabled and may mean total loss of benefits for themselves and survivors if they retire, die or become disabled in the near future. It is critical that the Congress act to clean up this mess. It could be solved very simply by (1) barring SSN prosecutions of aliens seeking amnesty and (2) requiring SSA to notify all of the amnesty aliens of both the need to correct their records and the fact that they will not be prosecuted. [SSA should be permitted to secure the names and addresses of there individuals from the INS, for this purpose.]

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[7] One example is the Denver regional memo which appears at page 288 of the Subcommittee's 1987 hearing, Serial 100-20. (April 2, 1987.)

[8] See document entitled "Background: SSA Impacts of Immigration Reform Legislation," submitted to the Subcommittee. This was supplied by SSA pursuant to a Freedom of Information Act request.

[9] "Significant Issues Number 87-4," from the Regional Commissioner, Kansas City, dated February 9, 1987; supplied to the Subcommittee.

[10] See Memo from Louis D. Enoff, Deputy Commissioner for Programs, to the Commissioner, entitled "Immigration Act Implementation Report - Week Ending April 16, 1987 - Information," (April 20, 1987). On page 3 of this memo on amnesty aliens, Mr. Enoff discusses the progress of issuance of the Ruling: "The ruling to clarify that a person who request an earnings record correction is responsible in most cases for providing the substantiating evidence has been completed..." [Please note that all of the blocked-out deletions in this document were made by SSA before it was provided pursuant to the Freedom of Information Act.] Other weekly reports by Mr. Enoff on amenesty aliens include a reference to the ruling.

Conclusion

These are tough times to be either a person in need of service from SSA or a line worker at SSA. H.R. 5250 would go a long way toward correcting some of the problems. It would also be very beneficial if the Subcommittee would consider legislation on the problems of amnesty aliens, elimination of "self-help" applications, and proper use of electronic funds transfer.

Thank you.

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[11] "Immigrants' Social Security Fraud Poses a Quandary," Washington Post, April 9, 1988.

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EXHIBITS ACCOMPANYING THE TESTIMONY
OF EILEEN P. SWEENEY

SEPTEMBER 22, 1988

Los Angeles Office: 7th Floor, 1052 West 6th Street, Los Angeles, California 90017 • (213) 482-3550

DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administration
Atlanta Field Assessment Office

Refer to: S2D4E (QA PH 2005)

Memorandum

Date · SEP 17 1987

From Assistant Regional Commissioner
Assessment

QA-11

Subject Evaluation of Atlanta Region SSA-3368 Self-Help Process--ACTION

To Regional Commissioner

As you requested, we have evaluated the effectiveness and efficiency of the SSA-3368 self-help process. The attached report recommends changes in the process to improve beneficiary service, and we will be happy to discuss them with you. You may contact Pat Lawson at 2271 if you or your staff has questions about the report.

/s/ Maxine McNutt
Maxine McNutt

Attachment

cc:
Associate Commissioner, Assessment
Assistant Regional Commissioner, Field Operations
Assistant Regional Commissioner, Programs
Deputy Assistant Regional Commissioner, Programs/Disability

Executive Summary

The Disability Quality Branch (DQB) has completed an evaluation of 300 SSA-3368's (Disability Report). The study cases were randomly selected from disability quality reviews that cleared the branch in June-July 1987. The study was done to evaluate the effectiveness of a regional self-help process that began in December 1986.

Problems were encountered during the SSA-3368 review. Files did not clearly indicate whether the self-help process was used. The study findings are based on the DQB analyst's best judgment in reviewing the medical portion of the folder.

Major findings from the review are:

- The self-help process was used in 64.3 percent of the SSA-3368's studied.
- One-fifth of the claimants using self-help should have been excluded, using regional guidelines.
- Only one of every five claimants using self-help provided complete and descriptive information on the SSA-3368. These claimants had high school or college educations or work experience that involved writing or forms completion.
- One-third of the claimant-completed SSA-3368's were supplemented upon receipt in the field office (FO). Over half of the supplementation was done on the claimant-completed SSA-3368, contrary to regional guidelines.
- Over half of the SSA-3368's that were not supplemented should have been.
- Filing dates shown on the SSA-831 (Item 3) were later than signature dates on the SSA-3368, indicating a potential problem, in almost one-fourth of the self-help cases. Non-medical files could show acceptable reasons for these differences.
- Self-help adds an average 9.8 days to processing. Supplementation by FO's adds another 7.6 days.

Major recommendations for corrective action are:

1. Allow FO's more discretion in selecting self-help candidates. The existing exclusions, as well as the claimant's ability to complete the form (i.e. education and work experience), must be considered.

EVALUATION OF ATLANTA REGION SSA-3368 SELF-HELP PROCESS

INTRODUCTION

During June-July 1987, the Disability Quality Branch (DQB) reviewed 300 SSA-3368's to evaluate the region's self-help process. The Atlanta Region implemented completion of SSA-3368's (Disability Reports) by the claimant at home in December 1986. A regional POMS had been distributed to field offices (FO's) instructing interviewers that this was the preferred method of self-help. (DI R 11005.020)

This DQB study of SSA-3368's in quality review sample cases was conducted to determine whether the process is operating effectively and efficiently. The SSA-3368's studied were randomly selected from disability sample cases selected by the Disability Determination Services (DDS) for quality review in DQB.

This study is based on a review of the medical portion of the disability folder only. The methodology was worked out with the Disability Programs Branch as the most feasible despite the expected problems with the data collection. Files were not clearly annotated to show whether the SSA-3368 was completed at home. Frequent handwriting differences on the SSA-3368 also made it hard to determine whether an SSA-3368 had been supplemented in the FO or whether someone other than the claimant, such as a relative, friend, social worker, or past employer had answered some questions for him at home. These study findings are based on the DQB analyst's best judgment in the case by case review of the medical portion of the sample folder.

The SSA-3368's in the sample were completed during January through June, with over half completed in March and April. (Exhibit 1)

The number of SSA-3368's reviewed per area varied because of differences in the disability quality assurance sample. Almost one-third of the SSA-3368's studied involved two areas--Kentucky (47) and Mississippi (44). Between 16 to 24 cases were reviewed from each of the other ten areas. (Exhibit 2)

SSA-3368's from East North Carolina were excluded from the study because this area and the North Carolina DDS are using a different process of SSA-3368 completion. (Exhibit 3) At the time of the disability interview, the claims representative (CR) completes an abbreviated SSA-3368. This form contains onset information, a description of the impairment, information on the claimant's primary job, education, and medical sources/tests. Observations are also recorded. This form is sent to the DDS.

2. Further evaluate the self-help process used in the East North Carolina Area for possible adoption regionwide.

3. FO's should review their internal self-help workflow process to make sure that disadvantageous filing dates are not used. Dates in almost one-fourth of the cases showed a potential problem with the filing date.

4. DQB should evaluate the SSA-3368 as part of the quality review process and provide additional, ongoing feedback to FO's, using an informational SSA-880 on each initial case.

The claimant in East North Carolina takes the regular SSA-3368 home and completes the sections on daily activities, vocational history, and education and mails the form directly to the DDS. The FO does not follow-up with the claimant. If the DDS needs additional information, they contact the claimant directly. The FO uses discretion in mental impairment cases to decide whether the claimant has the capacity to complete his part of the SSA-3368.

The Disability Program Administrator (DPA) recently reviewed 12 SSA-3368's completed by East North Carolina offices and found, without fail, that the form was entirely and professionally completed. Time savings were estimated to be 20-30 minutes per interview. The DPA reported that this procedure prevents duplication of effort by the FO and DDS, and that both components are very happy with the results.

A summary of regional findings follow. Specific findings by areas are provided in the attachments.

REGIONAL FINDINGS

Use of Self-Help

- DQB reviewed 300 SSA-3368's from 160 FO's in the Atlanta Region. Self-help was used in 193 cases (64.3 percent) . Among the areas, use of self-help ranged from 90.9 percent (40 cases) in Mississippi to 31.3 percent (5 cases) in South Florida. (Exhibit 2)

- Dates in 113 cases indicated that this self-help method added an average of 9.8 days to processing time regionally. Dates were undeterminable in the other 80 self-help cases.

- Potential filing date problems were noted in almost one-fourth of the self-help folders. In these cases, the filing date shown on the SSA-831 (Item 3) was later than the dates the claimant and/or the interviewer signed the SSA-3368.

  Disadvantageous filing dates may or may not be a true problem. This would depend on whether benefits were due (i.e. allowance versus denial) and if allowed, whether the filing date was retroactive. Even a one day difference in an SSI claim could affect the claimant's first check.

- One-fifth of the claimants using self-help should have been excluded from the process. Regional instructions (DI R 11005.020 D.2.) indicate that applicants with mental disorders that prevent them from working, as well as claimants who ask to have the form completed or appear concerned or apprehensive, are to be excluded from this self-help method.

Supplemented SSA-3368's

- One in three of the claimant-completed SSA-3368's was supplemented upon receipt in the FO. (Exhibit 4) Regional instructions state that a separate SSA-3368 or a Report of Contact (RC) is to be used to supplement missing/incomplete information or to clarify conflicting information. The forms signed by the applicant should never be used. (DI R 11005.020.D.1)

- Almost 70 percent of the supplemented information was written on the SSA-3368 signed by the claimant. FO employees frequently used red ink for this. About one fourth were supplemented using an RC. Four FO employees used a separate SSA-3368.

- Dates in 29 supplemented cases indicated that supplementation added an average 7.6 days to processing regionally, with a range of one to 29 days. Dates in the other 33 cases where the FO supplemented the SSA-3368 were undeterminable.

Unsupplemented SSA-3368's

- Two-thirds of the claimant-completed SSA-3368's were not supplemented upon receipt in the FO. Over half of these should have been, but were forwarded to the DDS with missing/incomplete/conflictive information on the SSA-3368.

- Approximately one in five claimants using the preferred regional process provided complete and descriptive information on the SSA-3368. Most of these claimants had high school educations (some had college degrees) and/or had experience working in jobs that involved completion of forms, such as bookkeepers, policemen, nurses, school teachers, and secretaries. No relation between the kind of disabling condition and professional completion of the SSA-3368 by the claimant was noted.

Self-Help Not Used

- Of the 300 SSA-3368's reviewed in the study, roughly one in three was not subject to this self help process. (Exhibit 5) Some of these SSA-3368's were probably completed partially by the claimant in the reception area or were completed totally by the interviewer and either signed then or taken/mailed for claimant signature. Roughly one-third of these cases met an exclusion category outlined in the regional instructions.

Error Cases

- The DQB identified quality review errors which could relate at all to SSA-3368 completion in only three cases. In one North Florida case where self-help was not used, DQB cited an error because dates of work in Question 14 Part V (Work Activity) were incomplete. The DDS also had not obtained an SSA-3369 (Vocational Report). Vocational factors were used to adjudicate the claim, but without complete work dates relevancy of the work experience could not be determined.

- Non-substantive errors were cited in two West North Carolina cases where the self-help process had been used. In one, the folder was returned to the FO to resolve conflictive information about onset and work attempts. Information in Part I and Part V of the SSA-3368 was conflictive. The Claims Representative (CR) had prepared an SSA-821 (Work Activity Report), but the issue was not resolved satisfactorily. In the other case, the folder was returned to the FO to have the CR complete Part V of the SSA-3820 and sign the form. This tear-off page was not in file.

DDS Contacts

- The DDS made an initial contact for SSA-3368 information (as opposed to "routine" DDS contacts such as to obtain descriptions of chest pain in cardiovascular claims) in almost one-third of the 300 cases.

- DDS adjudicators contacted
  - About one-third of the claimants who used self-help
  - Half the claimants with supplemented SSA-3368's
  - Almost one-third of the claimants with non-supplemented SSA-3368's.

- DDS's made the fewest contacts (19 of 107) in those cases where the FO did not use the self-help process.

- DDS policy, as well as the quality of claimant-completed SSA-3368's, affected the decision to make these contacts, however. The Mississippi DDS, for example, routinely contacts all claimants before undertaking medical development.

Error Prone Sections of the SSA-3368

- Except for Part IV (Education), all sections of the SSA-3368 were error-prone. The effect of any SSA-3368 inadequacy was not related as much to the way the form was completed as to other factors unique to each case, such as severity of the impairment, type of onset, the claimant's residual functional capacity, number and relevancy of treatment sources. DDS adjudicative practices also affected the impact of inadequate SSA-3368's. Some DDS's routinely made an initial contact with the claimant to review the SSA-3368, and inadequacies in it were corrected at that time.

o Recurring problems were these:

Part V (Work Information)

Question 14 requests specific job information. Month and year worked (from and to), days per week, and rate of pay were often blank, or sometimes only a year was shown. Dates worked, specifically date last worked, conflicted with responses in Part I (the dates provided in Question 1a, 3a, and "yes" answers to Question 2), and this was not resolved.

Question 15b was more of a problem than either 15a or 15c. Claimants responded better to checking boxes and circling the numbers provided on the form than to providing narrative. The most frequent problem in Question 15B was the tendency to enumerate job duties rather than describe what was done and how it was done. Only a few claimants gave a quality response to this question. Some examples are shown in Exhibit 6.

Part III (Activities)

Question 11 was a recurring problem. Many claimants simply wrote "none" or gave brief, vague answers of no value or consequence. Social contacts, for example, would be answered "yes" or "family and friends." "Other (drive car, etc)" would be answered "drive car." Yet, depending on the claimant's understanding of the type of response sought, a few claimants provided excellent answers. A 28 year old claimant with arthritis and gout was allowed using medical/vocational factors. He had a year of college. His excellent responses to Questions 10 and 11 were probably influential in determining his residual functional capacity. (Exhibit 7)

Part II (Medical Information)

This section requests a lot of dates and addresses, and omissions were common. DDS's frequently discuss this information with the claimant. Claimants tended to leave off the city, state and zip code of an address, if one was given. Depending again on the claimant's grasp of the intent of the question, some responses to "Reasons for Visits" and "Type of Treatment or Medicine Received" were also incomplete, blank, or vague.

Part I (Information About Your Condition)

This section was the one most often completed by the CR prior to giving/mailing the SSA-3368 to the claimant. No doubt this practice prevented a lot of error. Errors (omissions, vague and incomplete responses, and conflictive information) in this section probably have the most potential for adversely affecting the accuracy of the disability decision (particularly onset) and going undetected. (Exhibit 8)

CONCLUSIONS

- Although the preferred self-help process is used in the majority of SSA-3368's, most of them do not provide complete and descriptive information.

- Most of the inadequate SSA-3368's are accepted by FO's without supplementation.

- When supplementing, most FO reviewers write on the original SSA-3368.

- Self-help is used more often than it should be. Exceptions to the self-help process are being overlooked. Claimants alleging mental impairments are completing their own SSA-3368. The best candidates for the regional self-help process are those with work experience that have included completing forms or some writing skills or those with a high school education.

- The self-help process adds considerable time (more than two weeks on average when the form is supplemented) to FO processing of a disability claim, and the product generally results in more work for the DDS. This does not include the extra time required for local management reviews of self-help forms. Filing dates shown on the SSA-831 were later than signature dates on the SSA-3368, indicating a potential problem.

- In spite of the inadequacies of the self-help process, DDS's are able to make correct disability determinations.

RECOMMENDATIONS

1. Modify the regional instruction as follows:

   (a) Revise the exceptions section (DI R 11005.020 D.2.) to allow CR's more discretion in deciding which claimants are good candidates for self-help, especially if the claimant does not have at least a high school education or has not worked in a job where writing skills are used.

   (b) Add to the interviewer's role (DI R 11005.020 D.1.) a requirement that CR's complete Part I of the SSA-3368 prior to giving the form to the claimant to fill out at home.

   (c) Require CR's (in DI R 11005.020 D.1.) to complete Part VII Items 23 and 24 in all cases. If the SSA-3368 was completed by the claimant, this should be clearly annotated in Item 23. For example, when the claimant completes the SSA-3368, the CR should indicate "claimant - completed at home" in Item 23. This annotation will provide a firmer basis for future evaluation and regional decisions on the effectiveness of the self-help process. (ARC, Programs)

2. FO employees who are responsible for reviewing self-help SSA-3368's should look particularly for:

   - Complete responses in Question 14, Part V.

   - Consistency in dates shown in Question 14, Part V and Part I.

   - Descriptions of what the claimant did and how he did it, rather than enumerations of duties in 15b, Part V.

   - Quality descriptions of daily activities (what and how much of each was done and how often) in Question 11, Part III.

   - Complete medical information, including dates and addresses, in Part II. (ARC, Field Operations)

3. Require FO's to review their internal self-help process workflow to make certain that having the claimant complete the SSA-3368 at home does not result in a disadvantageous filing date. (ARC, Field Operations)

4. DQB examiners should evaluate SSA-3368's during their quality review of the medical decision and provide feedback on SSA-3368 completion to FO's postadjudicatively on a case-by-case basis. For a six month period, examiners should complete a standardized informational SSA-880 (to be developed), advising the FO of findings from the review of the SSA-3368 in the file. (ARC, Assessment)

5. Further evaluate the self-help process used in the East North Carolina Area for possible adoption regionwide. (ARC's, Field Operations and Programs)

Attachment
Page 1 of 8

ALABAMA

DQB reviewed 18 SSA-3368's from 12 FO's in Alabama. Self-help was used in 15 (83.3 percent) cases. Dates in nine cases indicated that the use of self-help added an average of eight days to processing time with a range from two to 40 days. Potential filing date problems were noted in four claims. The SSA-831 filing date in these claims was later than the dates the SSA-3368 was signed. Two claims should have been excluded from self-help because a mental impairment was alleged.

Five of the 15 self-help SSA-3368's were supplemented upon FO receipt. Two FO employees used an RC and three wrote on the original SSA-3368. Most often supplemented were Parts II and III. The DDS did not recontact any of these claimants for SSA-3368 information. Dates in three of these files indicated that supplementation added an average of nine days to processing, with a range of two to 22 days.

Ten self-help SSA-3368's were accepted as submitted by the claimant. Four claimants professionally completed the SSA-3368. Three of these had high school and/or college educations. The DDS did recontact one of these claimants to discuss onset. Three of the ten unsupplemented SSA-3368's should have been. Question 11 in Part II (Activities) was answered "none" on two SSA-3368's. Question 15b in Part V (Work) was also an enumeration, rather than a description. The disabling condition (D on page 1 of the SSA-3368) was left unanswered on the other SSA-3368. (The DDS called the claimant for this information.)

Three of the 18 (16.7 percent) SSA-3368's were not completed by self-help. One appeared to be a mental exclusion. The DDS did not recontact any of these claimants for SSA-3368 information.

NORTH FLORIDA

DQB reviewed 22 SSA-3368's from 10 FO's in North Florida. Self-help was used in 12 (54.5 percent) cases. Dates in five of these files indicated that the use of self-help added an average 9.4 days to processing time, with a range from five to 14 days. Potential filing date problems were noted in five claims. The SSA-831 filing date was later than the dates the CR and claimant signed the SSA-3368. One claim should not have been self-help because a mental impairment was alleged.

Four of the SSA-3368's were supplemented upon FO receipt. In three of these, the CR wrote on the original SSA-3368. One used an RC. The DDS recontacted two of these claimants to discuss current status and work activity. Dates in two of these files indicated that supplementation added an average of eight days to processing time, with a range of one to 15 days.

Eight of the 12 self-help SSA-3368's were not supplemented upon FO receipt. Four should have been. Four claimants professionally completed the SSA-3368. Two had college educations. Two were mothers of disabled children.

Ten (45.5 percent) of the 22 SSA-3368's were completed by the interviewer. One appeared to be excluded from self-help because a mental impairment was alleged. The DDS recontacted three of these claimants about SSA-3368 information. Incomplete dates in Question 14 (and no SSA-3369) in one file led DQB to cite an error because relevancy of alleged work in a medical/vocational decision could not be determined.

CENTRAL FLORIDA

DQB reviewed 17 SSA-3368's from 12 FO's in Central Florida. Self-help was used in eight (47.1 percent) cases. Dates in four of these files indicated that the use of self-help added an average of 21 days to processing time, with a range of four to 46 days. Potential filing date problems were noted in two claims. The SSA-831 filing date was later than the dates the CR and claimant signed the SSA-3368. One SSA-3368 should have been excluded because a mental condition was alleged.

Three of the self-help SSA-3368's were supplemented upon FO receipt. In each case the CR wrote on the original form. The DDS contacted one of these claimants to discuss treatment sources. Dates in one file indicated that supplementation added seven days to processing time.

Only one SSA-3368 was not supplemented and should have been. Dates shown in Part I were crossed out and changed with no explanation. Part V was also incomplete. Three claimants professionally completed the SSA-3368. Two had high school educations. The other claimant had no education, and someone else obviously completed the form for him.

Nine (52.9 percent) of the 17 SSA-3368's were completed by the CR. Three were probably excluded from self-help because mental impairments were alleged. The DDS recontacted three of these claimants about SSA-3368 information.

SOUTH FLORIDA

DQB reviewed 16 SSA-3368's from 12 FO's in South Florida. Self-help was used in five (31.3 percent) cases. Dates in two of these files indicated that use of self-help added an average of 16 days to processing time, with a range of seven to 25 days. Potential filing date problems were noted in two claims. The filing date shown on the SSA-831 was later than the dates the CR and claimant signed the SSA-3368. One case should have been excluded from self-help because a mental impairment was alleged.

CR's partially completed most of Part I in four of the five self-help forms, before giving them to the claimant. None of these were supplemented upon receipt in the FO, but all of them should have been. The claimants did not fully complete Parts II, III and V. The DDS recontacted one of these claimants for information on hospitalizations, treatment, and work history. None of the claimant-complete SSA-3368's reviewed in the study were very well done. One of the five self-help SSA-3368's was supplemented by the FO. The interviewer wrote on the original SSA-3368. Dates in file did not reveal the time involved in supplementation.

Eleven (68.8 percent) of the 16 SSA-3368's reviewed were completed by the CR. Eight were correctly excluded from self-help based on regional guidelines. The DDS did not recontact any of these claimants for SSA-3363 information.

SOUTH GEORGIA

DQB reviewed 20 SSA-3368's from 12 FO's in South Georgia. Self-help was used in seven cases (35.0 percent). Dates in three files indicated that self-help added an average of 5.7 days to processing time, with a range of two to eight days. One SSA-3368 indicated a potential filing date problem. The regional guidelines regarding exceptions to self-help appear to have been followed. No exclusions were involved in the seven self-help cases. The DDS did not contact any of these claimants for SSA-3368 information.

Two of the seven self-help forms were supplemented by the FO. In both cases, the CR wrote on the original SSA-3368. Parts III and V were involved in supplementation primarily. Dates in one case indicated that supplementation added five days to processing time. Five SSA-3368's were accepted with no supplementation. One of these should have been supplemented. The claimant's completion of Part III was particularly vague. Claimants professionally completed two self-help forms. Both had high school educations.

Thirteen (65 percent) of the 20 SSA-3368's reviewed were completed by the interviewer. Six of these were correctly excluded by the FO because a mental impairment or inability to complete the form was alleged. The DDS did not recontact any of these claimants.

NORTH GEORGIA

DQB reviewed 16 SSA-3368's from 10 FO's in North Georgia. Self-help was used in seven cases (43.8 percent). Dates in three of these files indicated that use of self-help added an average of 10 days to processing time, with a range from two to 15 days. Potential filing date problems were noted in three cases. The filing date shown on the SSA-831 was later than the dates the CR and claimant signed the SSA-3368. Two cases should have been excluded from self-help because a mental impairment was alleged.

None of the seven self-help SSA-3368's were supplemented upon FO receipt. Two should have been. One of the claimants alleged only a third grade education. In the other unsupplemented case, Part V (Work Activity) was incomplete and vague. The DDS recontacted this claimant. Three claimants professionally completed the SSA-3368. One had worked as a bookkeeper and one as a nurse. Both had at least 10 years of education. The other was a retired serviceman with a college education.

Nine (56.3 percent) of the 16 SSA-3368's were completed by the interviewer. Five of these appeared to meet the exclusion guidelines. Three involved mental conditions, and two claimants said they could not read or write. The DDS recontacted two claimants to discuss their condition and medical sources.

KENTUCKY

DQB reviewed 47 SSA-3368's from 20 FO's in Kentucky. Self-help was used in 30 (63.8 percent) cases. Dates in 20 files indicated that the use of self-help added an average of 9.3 days to processing time, with a range from one to 60 days. Potential filing date problems were noted in five claims. Thirteen claims should have been excluded from self-help because a mental impairment was alleged.

Seven of the 30 self-help SSA-3368's were supplemented upon FO receipt. In each case the CR wrote on the original SSA-3368. Four CR's used red ink. The DDS recontacted two of these claimants. Dates in six of these files indicated that supplementation added an average of seven days to processing, with a range of one to 27 days.

The majority (23 or 76.7 percent) of the self-help SSA-3368's were not supplemented upon FO receipt. Fifteen of them should have been. In 11 of these 15 SSA-3368's, Part V (Work Activity) was incomplete. The claimant frequently enumerated job duties rather than describing what he did and how he did it. In six SSA-3368's, responses to Part III, Question 11 (Daily Activities) were vague and incomplete. Six SSA-3368's also were missing some treatment source addresses and dates required in Part II (Medical Records). For example, one claimant answered a SSA-3820 question on dates of school attendance--"Monday-Friday." The DDS contacted six of these claimants.

Six claimants professionally completed the SSA-3368. Two were SSA-3820's completed by mothers of retarded children. One SSA-3368 was typed by a claimant with a high school education. The other three forms were completed by someone other than the claimant. In one case, it was clear from the file that the spouse had completed the form.

Seventeen of the 47 SSA-3368's (36.2 percent) were not completed using self-help. In one case, the claimant indicated that she did not want to complete the form herself. In two cases, the CR completed the SSA-3368 while interviewing a relative. Five cases involved claimants with a mental impairment. The other nine SSA-3368's were not annotated in any way that would indicate an exception to self-help. The DDS contacted three of these claimants.

MISSISSIPPI

DQB reviewed 44 SSA-3368's from 21 FO's in Mississippi. Self-help was used in 40 (90.9 percent) cases. Dates in 30 of these files indicated that use of self-help added an average of 10.0 days to processing time, with a range from one to 39 days. Filing dates shown on the SSA-831 were later than the signature dates on nine SSA-3368's. Eight claimants alleged a mental impairment and should have been excluded from self-help.

Eighteen of the 40 self-help SSA-3368's were supplemented. Seven were supplemented on an RC, two on separate SSA-3368's, and nine on the original SSA-3368 (five in red). Incomplete and vague responses in Parts III and V were most often supplemented. Dates in file indicated that supplementation added an average of 8.7 days to processing, with a range of one to 22 days.

Seventeen of the 22 SSA-3368's that were not supplemented should have been. Supplementation of Parts III and V was overlooked most often. Two claimants professionally completed the SSA-3368. Both had more than a high school education.

The Mississippi DDS routinely makes an initial contact with each claimant to discuss SSA-3368 information. The DDS contacted 30 of the 44 claimants initially. Fifteen of these SSA-3368's had been supplemented by the FO, and fifteen had not.

Four (9.1 percent) of the 44 SSA-3368's were completed by the interviewer. None of these involved a mental impairment. The DDS contacted two of the claimants.

WEST NORTH CAROLINA

DQB reviewed 22 SSA-3368's from 12 FO's in West North Carolina. Self-help had been used in 12 (54.5 percent) cases. Dates in five of these files indicated that use of self-help added an average of 9.8 days to processing time, with a range from one to 40 days. Filing dates shown on SSA-831's were later than the signature dates on two SSA-3368's. Two claimants alleged a mental impairment and should have been excluded from self-help.

Six of the 12 self-help forms were supplemented upon FO receipt. In three cases, supplementation was done on the original SSA-3368. (One CR used red ink.) In the other three cases, the CR used an RC. Dates in one file file indicated that supplementation added two days to processing time. The DDS contacted one of these claimants.

The other six self-help forms were accepted in the FO as submitted. However, all but one of these should have been supplemented because the claimant's responses were vague and/or incomplete. In two cases, the CR completed Part I of the SSA-3368 prior to giving it to the claimant. One of these was acceptable without supplementation. (In the other case, the CR also completed Question 14 in Part V before giving the form to the claimant.)

DQB returned two of the supplemented cases to the FO post-adjudicatively, with a SSA-830 indicating a non-substantive error. Onset and work activity were unresolved in one. In the other, the FO was requested to complete Part V of the SSA-3820, which was missing from the file.

Two of the five SSA-3368's not supplemented were completed so poorly that the interviewer's discretion in using self-help was questionable. One case involved a 62 year old visually-handicapped person with eight years of education. Most entries in Part I were not legible. Part II contained many blanks. Part III was extremely vague, as well as incomplete. Question 14 regarding jobs was not complete. The DDS prepared a three page RC after telephoning this claimant.

Ten of the 22 SSA-3368's (45.5 percent) were completed by the interviewer. The files were not annotated to indicate why self-help was not used. One claimant did say she could not complete the form. One claim also involved a mentally-retarded disabled child. The DDS contacted two of these claimants.

SOUTH CAROLINA

DQB reviewed 36 SSA-3368's from South Carolina. Self-help was used in 25 (69.4 percent) cases. Dates in 10 of these files indicated that use of self-help added an average 14.7 days to processing time, with a range of one to 57 days. Filing dates shown on the SSA-831 were later than the signature dates on 11 SSA-3368's (44.0 percent). Two claimants alleged a mental impairment and should have been excluded from self-help.

Five of the 25 self-help SSA-3368's were supplemented upon FO receipt. A separate SSA-3368 was used in two cases. CR's wrote on the original SSA-3368 in three other cases, using red in two of these cases.

Eleven of the 20 self-help SSA-3368's should have been supplemented and were not. Each of these had incomplete responses to Part III (Activities). Incomplete responses were also common in Part II (Medical Records) and Part V (Work Activity). Six claimants professionally completed the SSA-3368. Four of them had high school and college educations. Dates in two files indicated that supplementation added an average of 4.5 days to processing, with a range of one to 27 days. The DDS contacted two of these claimants.

Eleven (30.6 percent) of the 36 SSA-3368's were completed by the interviewer. Six were probably excluded from self-help because mental impairments were alleged. The DDS contacted one of these claimants to learn if he wore glasses.

EAST TENNESSEE

DQB reviewed 24 SSA-3368's from ten FO's in East Tennessee. Self-help had been used in 18 (75.0 percent) cases. Dates in 12 files indicated that the use of self-help added an average of 6.4 days to processing time, with a range from one to 21 days. A potential filing date problem was noted in one claim. Three claims should have been excluded from self-help because a mental impairment was alleged.

In 14 of the 18 self-help SSA-3368's, the interviewer completed Part I before the claimant was given the form to finish. Six of the 18 self-help SSA-3368's were supplemented upon FO receipt. In each case the reviewer made changes and additions on the original SSA-3368. Two used red ink. Part II (Medical Records) was supplemented most often. The DDS contacted five of these six claimants. Dates in three files indicated that supplementation added an average 3.7 days to processing, with a range of one to nine days.

The majority (12 or 66.7 percent) of the self-help SSA-3368's were not supplemented. Nine of them should have been. Part V (Work Activity) needed supplementation in seven cases. The claimants responses were vague and incomplete. Part II (Medical Records) should have been supplemented in five cases. Claimants failed to provide complete addresses, dates of visits, reasons for visits, and types of treatment. One claimant, for example, responded to the question "Type of Treatment or Medicine Received" with "received medicine and treatment." Part III (Activities) should have been supplemented in seven SSA-3368's. Claimants omitted sections in this part or gave vague, incomplete responses, especially to Question 11. The DDS contacted seven of these 12 claimants.

Two claimants professionally completed the SSA-3368's. Both had a high school education. One had work experience as a draftsman. Six (25.0 percent) of the 24 SSA-3368's were completed by the interviewer. None of these claimants alleged a mental impairment. The DDS contacted one of these claimants.

WEST TENNESSEE

DQB reviewed 18 SSA-3368's from 12 FO's in West Tennessee. Self-help was used in 14 (77.8 percent) cases. Dates in 10 cases indicated that use of self-help added an average of 7.4 days to processing time, with a range form one to 25 days. Potential filing date problems were noted in two claims. The filing date on the SSA-831 was later than the date the SSA-3368 was signed. Four claims should have been excluded from self-help under regional guidelines.

Five of the 18 SSA-3368's were supplemented upon FO receipt. Dates in these cases indicated that that supplementation added an average of 12.5 days to processing time, with a range of two to 29 days. In two cases, supplementation was done on an RC. In the other three the CR wrote on the original SSA-3368. Part II (Medical Records) was most often supplemented. The DDS contacted two of these claimants.

Nine of the 14 self-help SSA-3368's (64.3 percent) were not supplemented by the FO. Five of these should have been. Questions 14 and 15 in Part V (Work Activity) were blank or incomplete. In four instances, the activities in Part III were incomplete or vague. For example, a claimant indicated "very limited household duties," but did not describe how they were limited or what she could do. The DDS contacted four of these claimants.

Three claimants professionally completed the SSA-3368. One was a policeman with a college degree. The other two SSA-3368's were completed by a spouse and a storekeeper with a high school education.

Four of the 18 (22.2 percent) SSA-3368's were completed by the interviewer. One claimant alleged emotional problems. Otherwise, the files did not reflect why self-help was not used. The DDS did contact two of these claimants.

Exhibit 1

MONTH OF SSA-3368 COMPLETION

Area	January	February	March	April	May	June	Total
Alabama	1	3	6	5	3	0	18
North FL	0	0	4	8	6	4	22
Central FL	1	5	4	4	2	1	17
South FL	1	1	8	3	2	1	16
North GA	0	4	6	4	2	0	16
South GA	2	1	6	5	6	0	20
Kentucky	1	5	19	17	5	0	47
Mississippi	1	7	15	13	8	0	44
West North Carolina	0	2	2	7	6	5	22
South Carolina	0	5	6	14	10	1	36
East Tennessee	2	9	4	7	2	0	24
West Tennessee	5	5	5	2	1	0	18
Region	14	47	85	89	53	12	300

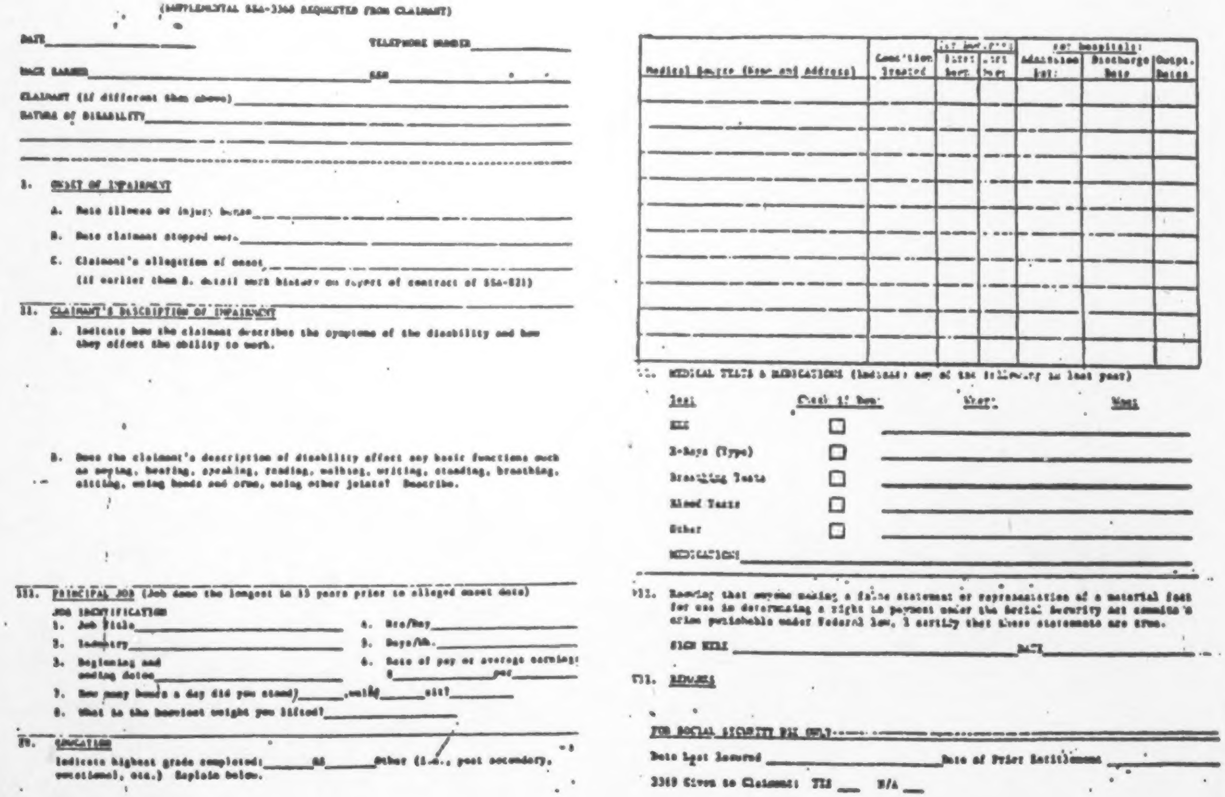
Exhibit 2

USE OF SELF-HELP PROCESS

Area	No. of FO's	No. of SSA-3368's	Self-Help Used No. (%)	Avg. Days Increase In Processing Time	Cases With Filing Date Problems No. (%)	Should Have Been Excluded From S/H No. (%)
Al	12	18	15 (83.3)	8.0	4 (26.7)	2 (13.3)
NFl	10	22	12 (54.5)	9.4	5 (41.7)	1 (8.3)
CFl*	12	17	8 (47.1)	21.0	2 (25.0)	1 (12.5)
SFl	12	16	5 (31.3)	16.0	2 (40.0)	1 (20.0)
NGa	10	16	7 (43.8)	10.0	3 (42.9)	2 (28.6)
SGa	12	20	7 (35.0)	5.7	1 (14.3)	0 (0.0)
Ky	20	47	30 (63.8)	9.3	5 (16.7)	13 (43.3)
Ms	21	44	40 (90.9)	10.0	9 (22.5)	8 (20.0)
WNC	12	22	12 (54.5)	9.8	2 (16.7)	2 (16.7)
SC	17	36	25 (69.4)	14.7	11 (44.0)	2 (8.0)
ETn	10	24	18 (75.0)	6.4	1 (5.6)	3 (16.7)
WTn	12	18	14 (77.8)	7.4	2 (14.3)	4 (28.6)
Region	160	300	193 (64.3)	9.8	47 (24.4)	39 (20.2)

Exhibit 3

This is the form completed by FO's in the East North Carolina Area.
The SSA-3368 is given to the claimant to mail directly to the DDS.



(SUPPLEMENTAL SSA-3368 REQUESTED FROM CLAIMANT)

DATE__________ TELEPHONE NUMBER__________

WAGE EARNER__________ SSN__________

CLAIMANT (if different than above)__________

NATURE OF DISABILITY__________

I. ONSET OF IMPAIRMENT

A. Date illness or injury began__________

B. Date claimant stopped work__________

C. Claimant's allegation of onset__________
(If earlier than B. detail work history on report of contact of SSA-821)

II. CLAIMANT'S DESCRIPTION OF IMPAIRMENT

A. Indicate how the claimant describes the symptoms of the disability and how they affect the ability to work.

B. Does the claimant's description of disability affect any basic functions such as seeing, hearing, speaking, reading, walking, writing, standing, breathing, sitting, using hands and arms, using other joints? Describe.

III. PRINCIPAL JOB (Job done the longest in 15 years prior to alleged onset date)

JOB IDENTIFICATION

1. Job Title__________
2. Industry__________
3. Beginning and ending dates__________
4. Hrs/Day__________
5. Days/Wk.__________
6. Rate of pay or average earnings $_____ per_____
7. How many hours a day did you stand?_____, walk_____, sit?_____
8. What is the heaviest weight you lifted?__________

IV. EDUCATION

Indicate highest grade completed:_____ HS_____ Other (i.e., post secondary, vocational, etc.) Explain below.

Medical Source (Name and Address)	Condition Treated	If Doctors: First Seen	Last Seen	For hospitals: Admission Date	Discharge Date	Outpt. Dates

VI. MEDICAL TESTS & MEDICATIONS (Indicate any of the following in last year)

Test	Check if Done	Where	When
EKG	☐		
X-Rays (Type)	☐		
Breathing Tests	☐		
Blood Tests	☐		
Other	☐		

MEDICATIONS__________

VII. Knowing that anyone making a false statement or representation of a material fact for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal law, I certify that these statements are true.

SIGN HERE__________ DATE__________

VIII. REMARKS

FOR SOCIAL SECURITY USE ONLY

Date Last Insured__________ Date of Prior Entitlement__________

3368 Given to Claimant: YES ___ N/A ___

Exhibit 4

SUPPLEMENTATION OF SELF-HELP SSA-3368's

	SUPPLEMENTED							NOT SUPPLEMENTED		
			Method							
Area	No.	(%)	A	B	C	Avg. Increase In Proc. Time	No. of DDS Contacts	No.	Should Have Been	No. of DDS Contacts
Al	5	(33.3)	3	2	0	9.0	0	10	3	2
NFl	4	(33.3)	3	1	0	8.0	2	8	4	1
CFl	3	(37.5)	3	0	0	7.0	1	5	1	2
SFl	1	(20.0)	1	0	0	0.0	1	4	4	1
NGa	0	(0.0)	0	0	0	0.0	0	7	2	1
SGa	2	(28.6)	2	0	0	5.0	0	5	1	0
Ky	7	(23.3)	7	0	0	7.0	2	23	15	6
Ms	18	(45.0)	9	7	2	8.7	15	22	17	15
WNC	6	(50.0)	3	3	0	2.0	1	6	5	1
SC	5	(20.0)	3	0	2	4.5	2	20	11	2
ETn	6	(33.3)	6	0	0	3.7	5	12	9	7
WTn	5	(35.7)	3	2	0	12.5	2	9	5	4
Region	62	(32.1)	43	15	4	7.6	31	131	77	42

*A-Same SSA-3368.

B-Report of Contact.

C-Separate SSA-3368.

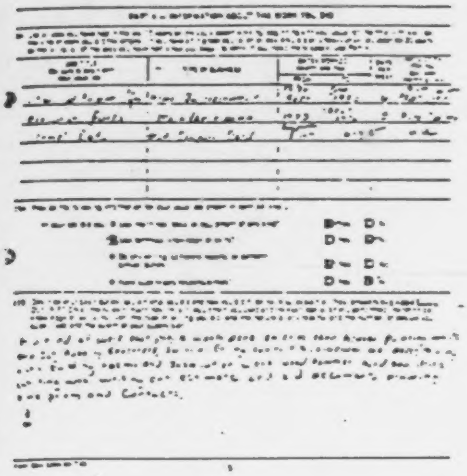
Exhibit 5

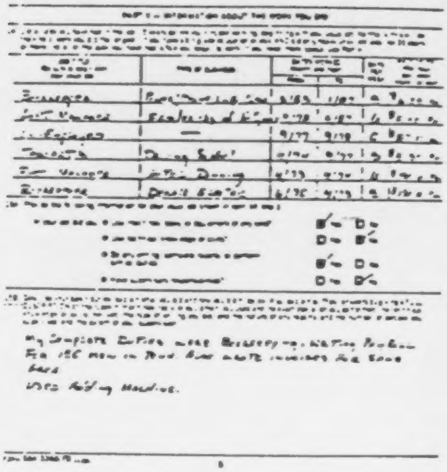
SELF-HELP PROCESS NOT USED

Area	Self-Help Not Used No. (%)	No. of Exclusions	No. of DDS Contacts
Alabama	3 (16.7)	1	0
N Florida	10 (45.5)	1	3
C Florida	9 (52.9)	3	3
S Florida	11 (68.8)	8	0
N Georgia	9 (56.3)	5	2
S Georgia	13 (65.0)	6	0
Kentucky	17 (36.2)	6	3
Mississippi	4 (9.1)	0	2
W N Carolina	10 (45.5)	2	2
South Carolina	11 (30.6)	6	1
E Tennessee	6 (25.0)	0	1
W Tennessee	4 (22.2)	1	2
Region	107 (35.7)	39	19

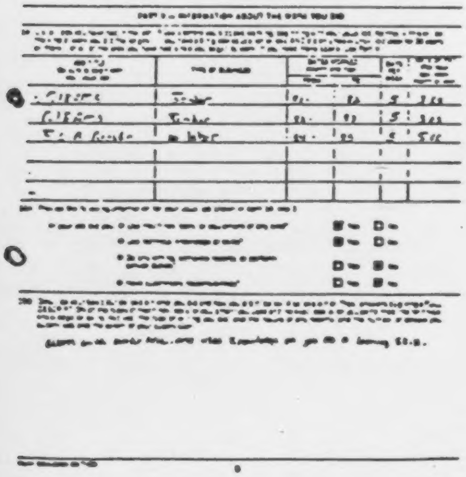
Exhibit 6

Good responses to Part V:





Vague and incomplete responses:



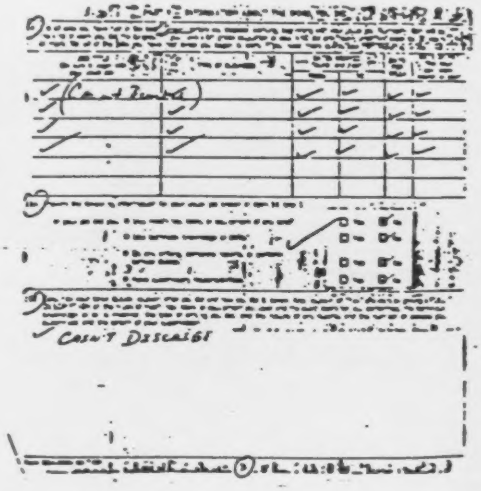
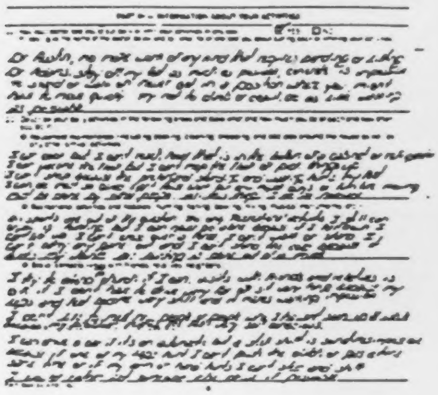
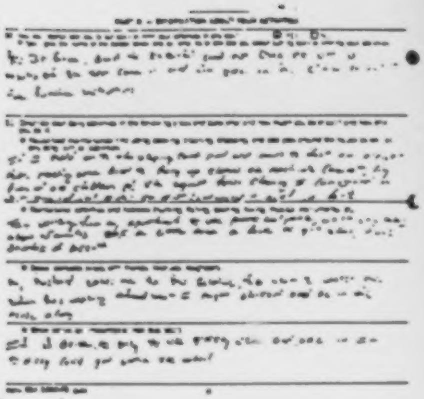


EXHIBIT 7

Quality responses to Part III:

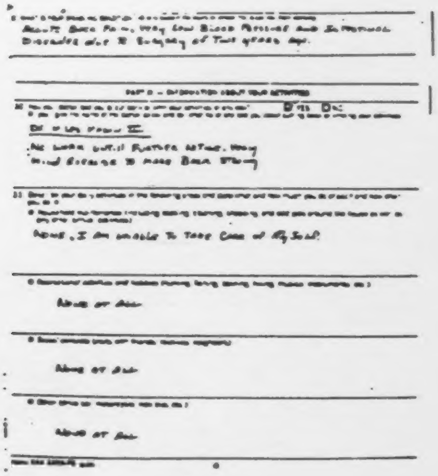


PART III – INFORMATION ABOUT YOUR ACTIVITIES



PART III – INFORMATION ABOUT YOUR ACTIVITIES

Vague responses that do not coincide with allegation:



Acute Back Pain, Very Low Blood Pressure and Intestinal Disorders due to Surgery of Two years ago.

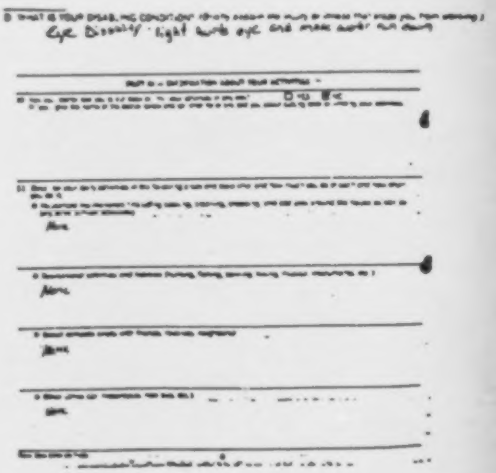
PART III – INFORMATION ABOUT YOUR ACTIVITIES

None, I am unable To Take Care of My Self.

None at All

None at All

None at All



WHAT IS YOUR DISABLING CONDITION?

Eye Disability light hurts eye and makes water run down

PART III – INFORMATION ABOUT YOUR ACTIVITIES

None

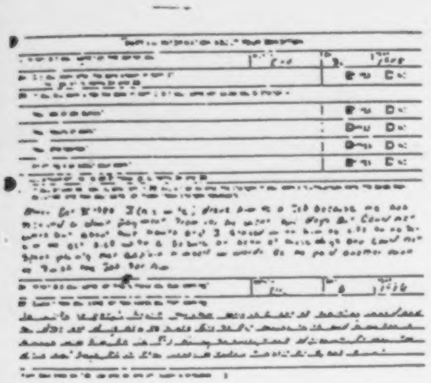
None

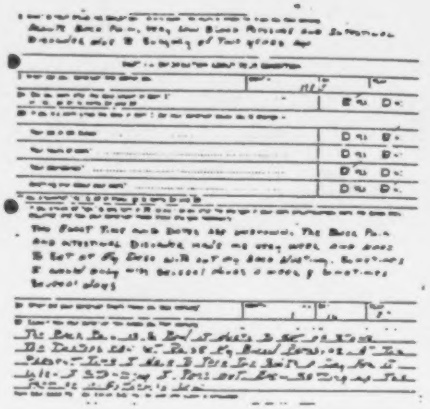
None

None

Exhibit 8

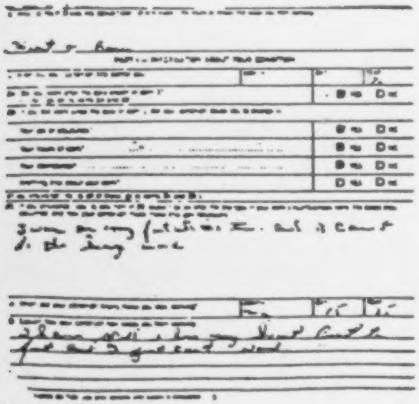
Good examples of claimant-completed Part I:

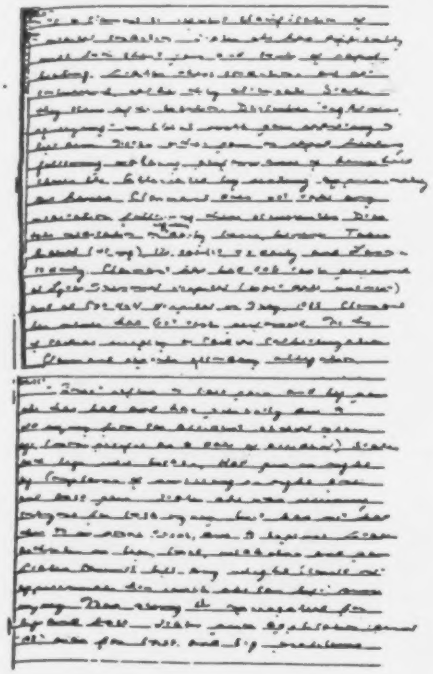




Vague responses to D results in DDS phone call to claimant to clarify . . . .

2c is vague in view of "yes" answers in 2b.





JUL 21 1987

Special Study Project Statement

STUDY ID: 68 AT 15105

TITLE: Assessment of Atlanta Region SSA-3368's completed by Self-Help

PURPOSE: C

OBJECT: 7

BACKGROUND: In December 1986, the region implemented a special procedure for claimant completion of the SSA-3368 (Disability Report) at home. POMS DI R 11005.020 contains the field office instructions. Performance problems at the field office level are identified through line management and end-of-line reviews by Area Directors. Regional management officials have requested that DQB conduct a study of initial decisions that are based on SSA-3368's which the claimant has completed at home.

OBJECTIVES:

1. To determine whether the self-help process is operating effectively/efficiently.
2. To determine whether new or revised instructions are needed.

METHODOLOGY: A program analyst will review SSA-3368's in folders that have cleared DQB and are in the mailroom. A data collection form will be completed on each case. (See attached.) When sufficient data is collected, a program analyst will prepare a report of findings. The study will include approximately 300 initial QA cases.

The East North Carolina Area is using a special "Supplemental SSA-3368 Requested From Claimant" form to obtain some disability information. These cases will be studied separately.

RESOURCE REQUIREMENTS: Completing the data collection form will require about 15 minutes for each case review.

300 cases x 15 minutes =	75 hours
Data Analysis and Report Writing =	48 hours
Clerical Time =	8 hours
Management Time =	8 hours
	139 hours

Workyears - 0.07

TIMEFRAMES: Data collection will take approximately 4 weeks with 3 weeks needed for analysis, report preparation, and report clearances.

LEAD COMPONENT: DQB

STAFF CONTACT: Christine Cropps

PHONE NUMBER: 242-3339

Projected Completion Date

Action	June	July
1. Data collection	x	x
2. Data analysis and report preparation		x
3. Review/Clearances		x

SSA-3368 Data Collection Form

SSN ____________ Claimant ____________

DDS ____________ FO ____________

ENC Case ____________ Area ____________

1. Was self-help used to complete the 3368?

   ___ No ___ Yes ___ Can't Tell

2. How was #23 of 3368 completed?

   ___ Personal Interview ___ Telephone ___ Mail ___ Left Blank

3. Can you determine whether an exception to self-help applied? (These are listed in the green regional POMS under D.2.)

   None Applied ____ Can't Tell ____

   Exception Applied Correctly ____ Exception Applied Incorrectly ____ (Please explain)

4. How was #24 of 3368 completed?

   ___ No ___ Personal Interview

   ___ Yes ___ Telephone

   ___ Left Blank ___ Mail

.If the 3368 was completed wholly by interviewer
STOP HERE

---

5. Was only a portion of the reverse 3368 subject to "self-help?"

   ___ No. All of pages 1-6 were completed by the claimant, apparently at home.

   ___ Yes. The questions the claimant answered under self-help were:

6. Was the claimant - completed 3368 acceptable with very little or no additional development?

   ___ Yes ___ No

7. If not, was the form so grossly inadequate as to call into question the interviewer's judgment in attempting self-help?

___ No ___ Yes If yes, please explain:

8. Was the needed supplementation attempted _____ / not attempted _____.

9. Explain how the needed supplementation was obtained:

10. Was supplementation appropriate/adequate?

___ Yes ___ No. If no, explain:

11. Which questions needed supplementation?

12. Did the DDS have to verify/clarify any items on 3368?

___ No ___ Yes. If yes, please explain:

13. In your review of the case, did anything on the 3368 lead to an error?

____ No

____ Yes

14. If so, please explain the kind of error charged and the specific problem:

15. What basis code was shown on the 831?

16. How many days did it take to receive the claimant-completed form? ___

17. -How many days did it take to obtain needed supplemental information? ___

18. Is there anything else noteworthy about this 3368 that would be important to the study?

SSA MANAGEMENT NEWSLETTER
For Supervisors and Management Personnel

November 16, 1987, Vol. XXIII, No. 19

PERSONNEL NOTES

Commissioner Hardy has announced the appointments and reassignments of 14 Senior Staff members. Assignments effective November 16 are as follows: Paul Bennett, Director, Office of Insurance Program Quality, Office of Assessment; Doug Badger, Director, Office of Legislative and Regulatory Policy; Jack Buffington, Associate Commissioner for Human Resources, Training, and Management Analysis; Joe Flynn, Acting Director, Office of Human Resources; Fete Herrera, Director, Office of Assistance Program Quality, Office of Assessment; Dalmer Hoskins, Director, Washington Office (Office of the Commissioner); Elliot Kirschbaum, Associate Commissioner for Policy; Toni Lenane, Deputy Associate Commissioner for Retirement and Survivors Insurance; Barbara Sledge, Deputy Associate Commissioner for Supplemental Security Income; Dale Sopper, Assistant Deputy Commissioner for Management; and Miguel Torrado, Acting Associate Commissioner for Information Systems. He will also serve as Director, Office of Strategic Planning. Other Senior Staff appointments are as follows: Jim Preissner, Director, Office of Computer Process Operations, effective November 2; Peggy Foertschbeck, Regional Commissioner, Seattle, December 1; and David Jenkins, Director, Mid-Atlantic Program Service Center, January 15.

Other assignments that took place recently in the regions include; Thomas Abbott from Social Insurance Program Specialist (Systems), Office of the Assistant Regional Commissioner, Programs, Boston to District Manager, Lowell, Massachusetts; Christine Cropps from Director, Disability Quality Branch, Field Assessment Office, Atlanta to District Manager, Winston-Salem, North Carolina; Gary Epling from Assistant District Manager, Greenville, South Carolina to District Manager, Decatur, Georgia; and Patricia Sullivan from Program Analysis Officer, Office of Central Operations to District Manager, Pittsburgh (Dtwn), Pennsylvania.

EMPLOYEES HONORED AT AWARDS CEREMONY

Commissioner Hardy presented Commissioner's Citations to 139 individuals and 5 groups of employees at SSA's thirty-sixth Annual Awards Ceremony at headquarters on November 5.

Social Security Administration
Office of Management, Budget, and Personnel
SSA Pub. No. 23-053

Thirty-four employees were honored for having completed 40 years of Federal Service.

Jesus Rico, Field Representative, Tucson, Arizona, received the Ewell T. Bartlett Award for Humanity in Government for his outstanding public service. In addition to his efforts to reach the Hispanic public to disseminate information about the Social Security program, Jesus is active in several community organizations. The award citation states: "He is highly regarded and respected throughout the Hispanic community. He is affectionately known as 'El Senor del Seguro Social' (Mr. Social Security)."

Janet Crump, Claims Representative, Phoenix, Arizona, who is blind, and Joseph Dunning, Maintenance Worker, Mid-America Program Service Center, who has limited use of his left arm and right leg, each received the Outstanding Handicapped Employee of the Year Award in recognition of their superior job performance and courage and initiative in overcoming severely limiting handicaps.

The Suggester of the Year Award was shared by Mary Arthur, Clerk Typist, Fort Wayne, Indiana, Sandra Chroninger, Development Clerk, La Crosse, Wisconsin, and Irazema Faykosh, Claims Clerk, Defiance, Ohio. These employees submitted similar suggestions and shared the award when it was adopted. The suggestion involves preprinting the representative payee paragraph on two SSI overpayment notices rather than having it manually typed and photocopied on to the approximately 7,500 overpayment notices involving representative payees issued monthly. Adoption of the suggestion produces an estimated yearly savings of $108,000.

The Substance Abuse Prevention Award was presented to Roslyn Gilligan, Claims Examiner, Office of Disability Operations, who has counseled substance abusers for the past 6 years, as a volunteer in her community and with SSA's Employee Health Services Unit and the Office of Disability's personnel counseling staff.

Dr. John Hamilton, a Medical Consultant, received a Commissioner's Special Citation for his contributions to the Disability Program. He chaired a workgroup that revised the standards for the determination of disability for mental impairments and helped train staff on the mental criteria.

Commissioner Hardy told the audience that when she spoke at last year's ceremony, she had been on the job for only a short time, and much of what she knew about SSA was based on reputation. "Today," she said, "I can say that I know the quality of your work and it is everything your reputation promised . . . I am convinced that no other organization more effectively combines competence and compassion in carrying out its mission. The performance of Social Security's employees continues to be the standard against which other agencies are measured."

Commissioner Hardy reviewed a few of the Agency's accomplishments over the past year. She said SSA has improved its productivity by operating in a more efficient, business-like way; modernization efforts are well under way; service to the public has improved through expanded use of the telephone (she is confident that SSA will reach its goal of 50 percent teleclaims next year); many field offices are using appointments and other innovative ideas to manage their workloads more efficiently and improve service; notices are being rewritten and redesigned to make them clearer, more concise and more understandable, and the Agency is making great strides in efforts to educate the public about Social Security.

NEW STANDARD ISSUED FOR CLERICAL, ADMINISTRATIVE SUPPORT POSITIONS

The Office of Personnel Management has issued a new qualification standard replacing standards previously applicable for 63 one-grade interval clerical and administrative support positions.

OPM says this new generic standard represents a major effort in its plan to simplify qualification standards and provide Federal managers with additional flexibility in filling jobs with quality candidates. And while the standard provides additional flexibility, it allows managers to continue to apply more selective criteria if they so choose. The new standard also makes it easier for an employee to move from one job series to another.

MSPB STUDY REPORTS INCREASE IN SETTLEMENTS OF EMPLOYEE APPEALS

Federal employees who appealed personnel actions to the Merit Systems Protection Board settled their disputes with the agencies in about 1 out of 4 cases during FY 1986. The settlement rate was 26 percent; a significant increase over the 6 percent rate in FY 1984. These findings were reported recently in an MSPB study which reviews the cases acted on by the Board and its 11 regional offices during FY 1986 and charts trends by comparing data for FY 1982-1986.

The MSPB regional offices acted on 6,849 initial appeals from employees during the year. The Board's administrative judges issued decisions or facilitated settlements in more than half of the cases, with the remainder being dismissed for lack of jurisdiction or timeliness. While settlement was achieved in 26 percent of all those cases not dismissed, there was a wide variation in settlement rates among cases involving different types of personnel actions. The highest rates were found in appeals from probationary terminations (42 percent), denials of within-grade increases (39 percent), and adverse actions (36 percent). Appeals involving retirement issues showed the least settlement activity (7 percent).

Fifty-one percent of the 6,849 appeals resulted from adverse actions taken by the employing agencies. Another 18 percent involved disagreements over entitlements under the Civil Service Retirement System. The remainder were divided among six other appeal categories.

As a percentage of the total number of appeals acted on, those arising from reduction-in-force (RIF) actions showed the greatest decline over the 5-year period (from 24 percent to 5 percent), reflecting a general decline in RIF activity. The percentage of appeals in other categories remained relatively constant.

In 74 percent of the cases that were fully adjudicated, the administrative judges affirmed the agency action. In those cases where the decision changed the agency's action, the changes included reversals of an agency's action and mitigations reducing the penalty imposed by an agency.

In addition to action on initial appeals, the Board's regional offices issued decisions in 1,089 special cases arising out of an earlier MSPB decision. These cases included requests for attorney fees, requests for enforcement of Board orders, and remands. The MSPB headquarters issued decisions on 1,620 petitions for review of regional office decisions. Of the 1,396 petitions to review initial decisions, 84 percent were filed by employees. The Board upheld the initial decision of the administrative judge in almost 93 percent of the cases.

SPECIAL RULES CAN BE USED FOR EXCUSING MOBILITY-IMPAIRED EMPLOYEES

The Office of Human Resources reminds supervisors that while a firstline supervisor's authority to excuse absences is limited to 2 hours during hazardous weather, SSA's policy is to excuse mobility-impaired employees up to 16 consecutive workhours when weather conditions make it extremely difficult for them to get to work. Only Associate Commissioners (or designated officials one level below) are authorized to excuse these absences.

If you supervise mobility-impaired employees, you must interview them each year to find out how they get to and from work and how adverse weather conditions affect their commuting. If you determine that an employee's situation merits coverage, notify the employee, document the reasons, and send the documentation to the official authorized to excuse the absence. When the mobility-impaired employee requests excused absence of more than 2 hours, he or she should complete Form SSA-4289, Request for Excused Absence. You should send the completed request to the authorizing official. For more information concerning the policies and procedures for excusing employees during emergency situations, call your servicing personnel office (at headquarters, call 965-1027).

INTEREST RATE ANNOUNCED

During November, employees who are enrolled in the Federal Employees' Retirement System Thrift Savings Plan are receiving 9 percent interest on their investment.

This Newsletter is issued twice a month by the Office of Human Resources, OMBP, to SSA management and supervisory personnel for administrative information only. It does not alter or supersede regulations, operating procedures, or manual instructions. Address contributions and inquiries to the Editor, Room 4114, Annex, Baltimore, Md. 21235, Phone 965-1042, FTS 625-1042.

S.S.A. PROGRAM CIRCULAR

General Series

No. 02-88-OP

Date: April 21, 1988

Office of Policy

DIRECT DEPOSIT

New Policy Regarding Direct Deposit

Soon you will receive a Program Operations Manual System (POMS) transmittal which replaces GN 02402.100ff. These instructions outline a significant change in policy regarding the direct deposit program. Direct deposit is now the preferred method of payment for initial claims. This change in policy is the result of new Treasury Department regulations which no longer require completion of the SF-1199A (Direct Deposit Sign-Up Form). The new policy is effective upon receipt of the POMS transmittal.

Direct deposit has been available for the past 10 years. It is a safe and convenient method of receiving Social Security benefits. Because it is more reliable than checks, direct deposit also helps reduce FO workloads. According to Treasury, there is one allegation of non-receipt for every 1,087 checks issued. With direct deposit, the ratio of non-receipt allegation drops to one out of every 8,794 payments.

There are 3.6 million initial awards each year to Social Security beneficiaries. Most people who switch to direct deposit do so within 6 months of becoming entitled. Previously, these beneficiaries had to contact their financial institutions, complete sign-up forms, and wait until SSA processed the forms. This created a substantial postentitlement workload for field offices - totalling about 2 million initial direct deposit actions each year.

This policy change will save time in field offices and be a real convenience for our beneficiaries. About 80 percent of new title II beneficiaries should be able to arrange for direct deposit at the initial interview, although the percentage for SSI will be lower because fewer SSI recipients have accounts at financial institutions. For those beneficiaries already receiving benefits, direct deposit actions can be taken based on a phone call.

DISTRIBUTION: All Holders Of POMS GN 02402 DESTRUCTION DATE: 3/30/89

Social Security Administration
Office of Policy
SSA Pub. No. 60-260

Selective Distribution
A87/PSC
To adjust quantity requirements, submit form SSA-1796, "Request for Address or Distribution Change"

Most people who use direct deposit have their benefits sent to a checking account. The new POMS instructions provide specific guidelines on how to find the routing transit number (RTN) and depositor account number (DAN) on the bottom of a claimant's personal check. The transmittal also describes how to get the necessary information from other financial institution documents, such as a *passbook or account statement.*

In addition to these guidelines on how to use beneficiary-provided documents, you will soon receive a book, "The American Bankers Association Key To Routing Numbers," which lists financial institutions and their RTNs in alphabetical order by state. One of these books will go to each district office, branch office, resident station, teleservice center, program service center, and regional office. And within the next year, the information should be available for online queries.

Claims application forms will be revised this year. At that time, the question on direct deposit will be modified to capture the RTN and DAN, or document a beneficiary refusal of direct deposit or the fact that there is no financial institution account. In the interim, the new POMS instructions tell you how to document the file (e.g., in the remarks or direct deposit section of the form).

Public information materials were changed to reflect the new policy with the January 1988 editions. At the present time, there is a screen on SSADARS which can be used to input postentitlement direct deposit actions. The information can be gathered on the screens for claims taken in the Modernized Claims System (MCS). To further support this policy, enhancements are planned for MCS. In the future, FO's will be provided with additional MCS interviewing screens for postentitlement actions and, as stated above, an online data base of financial institutions and their RTNs.

BACKGROUND

SSA IMPACTS OF IMMIGRATION REFORM LEGISLATION

Description of Immigration Reform Bill

- On the premise that the large majority of illegal aliens enter this country to find work, the legislation seeks to limit the influx by imposing sanctions on employers who knowingly hire them.
- Recognizing that many aliens who entered the U.S. illegally have established roots here, a second feature of the legislation provides for legalizing their status. To qualify, the alien must have entered the U.S. before January 1, 1982, and resided here continuously since then.
- A third major feature of the bill provides various reliefs to agricultural employers who have grown dependent on the relatively large available pool of illegal alien workers. At the same time, the bill protects certain foreign agricultural workers by granting them temporary resident alien status.

SSA Workloads - General

Enumeration and earnings record maintenance would be the major impacted SSA functions. All three of the legislation's major features would contribute to the attendant workloads. In addition, the newly legalized aliens will have immediate access to the Supplemental Security Income (SSI) program.

The workloads associated with the legalization and agricultural provisions would be concentrated in localities with high illegal alien and farmworker populations, respectively. The most heavily impacted areas are expected to be southern California, the San Francisco Bay Area, greater New York, greater Chicago, and southern Texas. The workloads associated with the sanctions provisions would be more generally distributed across the country.

Specific Workloads and Time of Incidence Sanctions Related Workloads

Shortly after enactment, inquiries about the bill and its effect are likely to begin. The public at large, concerned about the sanctions provisions, would inquire about obtaining a Social Security number (SSN) card as proof of U.S. work authority. Employers also might contact SSA for information about the SSN's role in the employment verification process.

At enactment, the Immigration and Naturalization Service (INS) would implement the first phase of its employer sanctions enforcement program. During this phase, extending 6 months, INS would conduct a series of educational visits to employers. The next phase, also 6 months in length would see INS continuing its educational activities, and the beginning of enforcement actions. At the end of this phase, 1 year after enactment, full INS enforcement activities would begin.

Throughout this time, applications for replacement SSN cards would rise as jobseekers who have lost their original cards become aware that the card is needed as proof of work authority. The workload might peak during the start-up period of each enforcement program phase. The annual additional workload volume might be about 3-4 million, although this estimate is not firm. A by-product of this workload would be an increase in the SSN and earnings record correction workloads resulting from the identification of instances in which more than one individual is assigned the same SSN. Such instances would occur when one individual mistakenly uses another's SSN, or in the relatively rare case when SSA mistakenly assigns the same SSN to two or more individuals.

Legalization Related Workloads

The legalization program will begin within 180 days of enactment. Some months prior to that time, possibly beginning shortly after enactment, requests for SSA earnings record information might begin to be received from prospective legalization applicants as supporting evidence for their applications.

SSA's primary role in the legalization process would be to enumerate the newly legalized aliens. The aliens, most of whom are working, would need the SSN card as soon as possible after INS issues the registration card. The legalization period is expected to extend 12 months, during which 2.5 - 3 million applicants potentially could be legalized, according to IRS estimates. The workflow is not likely to be even. It will have a number of peaks and valleys, and probably with a heavy rush towards the end of the period.

The large majority of legalization applicants first will pass through a screening stage consisting of voluntary agencies (VOLAGS) acting as agents for the INS. The VOLAG traffic, if properly monitored, should provide an adequate mechanism of the volume and time of occurrence of SSA workloads.

At the same time, a heavy earnings record correction workload is expected to arise as the aliens (and their advocacy groups) request crediting of their earnings during the period of illegal residency to their new, valid SSN. This would be a time consuming, labor-intensive workload, the total resolution of which would extend for several years afterwards. Firm workload volume estimates are not available. It is generally agreed, however, that it is not unreasonable to assume that one-half of the newly legalized aliens, perhaps 1.5 million people, would bring an earnings problem to SSA's attention.

In addition, the SSI program would become immediately available to legalized aliens. Because the population group is generally young, able-bodied, and working, we do not believe a sizable workload would develop as a result. We will look into this further.

Foreign Agricultural Worker Workloads

The major SSA workload would be to enumerate the foreign agricultural workers who are granted temporary legal resident status. The workload could be as high as 600,000 during the first year. We believe a cap of 350,000 is imposed on the number of allowable foreign workers in succeeding years. INS expects to process the first group of eligible workers through the same pipeline as the larger body of legalization applicants.

Miscellaneous

Study of the Feasibility of an SSN Telephone Verification System

SSA likely will be one of the major players in this study. There will be no immediate operational impact.

Alien Verification System

The bill requires verification of the legal alien status of applicants for certain Federally funded assistance programs. SSA was successful in its efforts to exempt the SSI program from this system. SSA already has a similar, but less burdensome, verification mechanism in place with INS.

Attached is a timeline chart illustrating the above discussion.

Attachment

Atlanta Regional Memorandum

87-17 11/18/86

Refer to: 2 ML 2351

TO : All Social Security Regional Components

FROM : Regional Commissioner

SUBJECT: Enumeration Activities Related to Recent Legislation - INFORMATION

The attached fact sheets were prepared recently for the Regional Commissioner and he suggested we share them with you for your information. They are current as of November 13, 1986.

TAX REFORM LEGISLATION ENUMERATION OF DEPENDENTS
TINS FOR TOTS

(Refer to Atlanta Regional Memorandum 87-12 dated November 7, 1986)

- A provision of section 1524 Tax Reform Act of 1986 requires individuals filing tax returns after December 1987 to include the Taxpayer Identification Number (TIN), usually the SSN, of each person over age 4 claimed as a dependent.
- Estimated number of dependents to be enumerated nationally is 9 million.
- Estimated number to be enumerated in the Atlanta Region is 1,544,000.
- Deadline for the project is April 15, 1988.
- No additional resources are planned.
- A taskforce is meeting centrally to plan national strategy.
- School enumeration will probably be the means of implementing TINS for TOTS during period January through May 1987.
- IRS/SSA Direct Mailing (June-December 1987) to be done on a staggered basis, only to those individuals who have not already been enumerated under the school enumeration process.

- An estimated 1.5 - 2 million people are expected to request earnings record corrections (one-half the newly legalized aliens) to properly credit earnings to their new account number.

- The earnings record correction workload is expected to be time consuming and labor intensive. Complete resolution is expected to extend several years after the year of enactment.

Any questions on this ARM should be directed to
at or

Gordon M. Sherman
Gordon M. Sherman

[illegible]

DEPARTMENT OF HEALTH & HUMAN SERVICES — Social Security Administrati

Refer to:

Memorandur

Date : FEB 9 1987

From : Regional Commissioner
Kansas City

Subject: Significant Issues Number 87-4

To : All Assistant Regional Commissioners
Area Directors/State Manager
District/Branch/Teleservice Center Managers

Immigration Reform

An SSA Implementation Task Force for Immigration Reform legislation has been convened and is reviewing the strategy for SSA. Regular meetings are being held between SSA and INS to determine how our agencies can work together in the legalization process. INS plans to give temporary residence to aliens at the legalization centers but will only provide final approval for permanent residence in a regional processing center 90 to 180 days after the initial contact. Two possible strategies emerged:

1. SSA will consider issuing time-limited Social Security cards (i.e., a card with a legend "Not Valid After ________").
2. INS will consider the feasibility of certifying SSN applications at the legalization center.

Because SSA will have no face-to-face contact with aliens during the enumeration process, earnings discrepancies will only be identified through requests from aliens to correct their records. Requests will be treated like any other members of the public who identify problems with their records. SSA is also examining ways to tighten development procedures and permit flexibility to minimize the workload impact from this approach.

4/15/87

SIGNIFICANT ISSUES REPORT-IPS

Immigration Reform Implementation Planning

Final agreements with the Immigration and Naturalization Service (INS) on the process of enumerating newly legalized aliens are being held up pending a decision on how to deal with a recently identified "fallout" workload. Because of legal constraints, INS is proposing to issue work authority status to aliens who file a completed application and pay a fee, but whose intierview is scheduled for 31 days or more in the future. A special enumeration process is required for those fallout cases. Several options now are being explored.

It is not possible to estimate the number of cases which would require special handling. INS expects the need for special handling to occur most frequently in Los Angeles and New York City and probably to a lesser degree in Chicago and Dallas.

The Management Newsletter of 3/31/87 contains an item which states that INS and SSA are negotiating how the SS-5's will be handled. It includes information about INS's plan to provide temporary work permits to aliens while their application is in process.

Because it appears no final agreement will be reached on the processing of SS-5's by May, we should prepare to receive heavy requests for numbers from aliens.

Program Cir ular Items 4/23/87

Immigration

Contacts with the Field Liaison and Support Staff indicate that final agreements with the Immigration and Naturalization Service (INS) on the process of enumerating newly legalized aliens are being held up pending a decision on how to handle enumeration of certain aliens. Because of legal constraints, INS is proposing to issue work permits to aliens who file an application but whose interview is scheduled for 31 days or more in the future. A special enumeration process is required for these cases. Several options are being explored. However, it appears no agreement will be reached by May. Therefore, aliens will be referred to SSA for a number.

Texas Verification Pilot

The Texas SSN Verification Pilot was implemented in Dallas, El Paso, and Corpus Christi on January 20, 1987. The purpose of this pilot is to experiment with ways of providing numident verification to reduce the potential impact of the Immigration legislation upon field offices as employers attempt to comply with the legislation. Special units have been established to handle inquiries. Employers in the area have been contacted to inform them about the project. The numident on-line data base is checked against the name, date of birth, and number the employer gives to determine if the Social Security number belongs to the worker. Through February 11, 1987, 790 calls had been received and 546 names and numbers were verified. Written confirmation is provided through use of a personal computer and a laser printer. Presently, there are no plans to implement this project nationally. However, if it is implemented, the intent would be to automate the process as much as possible and to have a central unit receive the calls.

DEPARTMENT OF HEALTH & HUMAN SERVICES **Social Security Administration**

Refer to:
SMHJ2
NJC 87-A12

Baltimore MD 21235

April 23, 1987

Mr. Arthur B. Johnson
Spokesperson, AFGE/SSA
General Committee
P.O. Box 15281
601 East 12th Street, Room 1703
Kansas City, Missouri 64106

Dear Mr. Johnson:

Due to the effects of the Immigration Reform and Control Act of 1986, SSA will be enumerating a potential workload of 4 million individuals who have been residing in the United States, but have not received a Social Security number valid for work in the United States. (The relevant portion of the Social Security Act is enclosed for your information.) We anticipate that most of these individuals will be assisted in completing SS-5s by voluntary agencies which are responsible for the first step in processing applications for legalization under the Act. The Immigration and Naturalization Service (INS) will certify the SS-5s.

Beginning in mid-May 1987 and continuing for approximately 1 year, INS will send the certified SS-5s to SSA field offices for input under existing procedures. If backlogs develop in a field office, the established procedures for transferring SS-5s to the appropriate processing center for input will be used. We estimate that the additional workyears required to input these SS-5s will amount to less than 2 percent of total field office workyears. In heavily impacted areas, some applicants for legalization may be referred directly to SSA field offices for completion of SS-5s. In addition, approximately 44,000 applicants for legalization are also expected to file applications for Supplemental Security Income benefits. These claims will require a minimal amount of special handling. We will send you a copy of the operating instructions for field offices as soon as they become available.

We do not foresee more than a *de minimis* impact on bargaining unit employees as a result of this legislation. We do not foresee impacts on position assignments, work locations or hours of work. Essentially, there will be a relatively small temporary workload increase which will be performed by employees already performing those duties. If you have any questions about this matter, please contact of my staff on .

Sincerely,

Peter Spencer
Peter D. Spencer
Director
Division of Labor and Employee Relations

Enclosure

bcc:
Mr. Doggette
Mr. Sopper
OCO
FLSS
Ms. Lenane
Ms. Eckert
DLER Branches
Regional LRSs
PSC LRSs

DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administration

Refer to

Memorandum

Date: APR 20 1987

From: Deputy Commissioner
for Programs

Subject: Immigration Act Implementation Report--Week Ending April 16, 1987--INFORMATION

To: Commissioner of Social Security
THRU: ES ____________

o [redacted]

[redacted]

A memorandum of understanding (MOU) is being prepared to cover all the activities agreed to by both agencies. While we are optimistic that we'll get agreement by INS there are two sensitive issues which could derail the plan. First, SSA cannot handle the printing workload for the Social Security number notification and must contract it out. This could cost $100,000 to $250,000. INS will be asked to cover this cost. (They have already agreed to pay postage--about $850,000.) Second, VOLAGS may balk at having to help the alien complete the SS-5 without additional reimbursement from SSA or INS. INS has suggested letting the VOLAGS charge the alien for this service but our recommended position is that the help granted must be free since there would be no charge if handled in a DO.

Conference Call with Regional Commissioners

At the request of Herb Doggette, Toni Lenane and I participated in a conference call with the RC's on April 16 to describe for them the enumeration process SSA and INS have informally agreed upon. The regions responded favorably to the outlined approach and raised several concerns which the task force is now exploring emphasizing the potential need for some workload relief in those SSA offices directly involved in enumeration due to INS waiting times. Our preliminary analysis indicates we will be able to grant the requested relief by permitting greater field management flexibility in assigning personnel to this workload.

Working With Qualified Designated Entities (QDE)

A key element in the enumeration process for legalization applicants is the help the voluntary agencies and individuals who serve as QDEs can provide. INS will begin a series of one-day workshops for QDEs and potential QDEs on April 21. SSA is working quickly to assure participation in these sessions, as it will be our first opportunity to advise the entities how the enumeration process will work. Local field office personnel will represent SSA at the sessions.

On April 23 INS will host a meeting of key Catholic Charity officials whose local groups will comprise the lion's share of QDEs. SSA's Immigration Task Force will be represented. This meeting should give us the best indication of what problems, if any, we will have in working with the QDEs.

- Earnings Discrepancy Ruling

  The ruling to clarify that a person who requests an earnings record correction is responsible in most cases for providing the substantiating evidence has been completed. We are now forwarding the ruling to the Assistant General Counsel and to all deputy commissioners for their concurrence; thus, we expect to send it to you by April 30, as you requested.

- Texas SSN Verification Pilot

  DCS has developed a system to demonstrate how a paperless SSN verification process could look. While the demonstration system as presently assembled would not be suitable for national implementation, it is a working system that is user friendly; makes excellent use of color graphics; and combines the functions of the verification procedure, capture and display of management information, and printing of verification letters. Installation and testing are expected to begin in Oak Cliff towards the end of April. DCS expects to have the demonstration system fully operational by May 20, the target date you requested.

  --Cumulative statistics for the pilot are attached.

Louis D. Enoff

Attachment

cc:
Ms. Borden
Mr. Doggette
Mr. Manzano
Mr. Sabatini

resented by counsel, has not met her burden of showing the changed circumstances envisioned by 20 C.F.R. §409.509.

It might also be argued that the Court should consider the "equity" of recovering the overpayment in the broader sense of the term rather than as it is technically defined in 20 C.F.R. §404.509. There has been some suggestion that a district court is not rigidly confined to the wording of the regulations in this regard. *See Rosofsky v. Schweiker*, 523 F.Supp. 1180, 1188 (E.D.N.Y. 1981), *appeal dismissed*, 457 U.S. 1141, 102 S.Ct. 3474, 73 L.Ed.2d 1361 (1982) (court not strictly bound by 20 C.F.R. §404.509 in determining equity and good conscience). Even under general equitable principles, however, this Court believes that the overpayment can be recovered fairly. The Secretary's conclusion that recovery would not be against equity and good conscience is reasonable and should not be disturbed.

* * * * *

SO ORDERED.

SSR 87-17

POLICY INTERPRETATION RULING

TITLE II: REQUESTS FOR CORRECTION OF EARNINGS RECORDS—THE INDIVIDUAL'S RESPONSIBILITY TO PROVIDE EVIDENCE TO AID THE SOCIAL SECURITY ADMINISTRATION'S INVESTIGATION

PURPOSE: To clarify 20 CFR 404.820(b) to show that when an individual requests a revision of his or her earnings record, it is his or her responsibility to present sufficient evidence to SSA to establish that the record may not be accurate and to clarify 20 CFR 422.125(f) to show what investigative steps SSA will take based on that evidence.

CITATIONS (Authority): Section 205(c)(3)–205(c)(5)(J) of the Social Security Act; Regulations No. 4, sections 404.802, 404.820–404.823; Regulations No. 22, section 422.125(f).

PERTINENT HISTORY: Section 205(c)(3) of the Social Security Act (the Act) provides that the Secretary's record shall be evidence of the amounts of wages paid to, and self-employment income derived by, an individual and of the periods to which such wages were paid and such income was derived. The absence of an entry in such record as to wages alleged to have been paid to, or as to self-employment income alleged to have been derived by, an individual in any period shall be evidence that no such alleged wages were paid to, or that no such alleged income was derived by, such individual during such period.

Section 205(c)(4) of the Act provides that, within the time limitation of 3 years, 3 months, 15 days after the year in which wages were paid or self-employment income derived, an individual's earnings record ordinarily may be corrected. After the time limitation, section 205(c)(4)(A) of the Act provides that the Secretary's records of the amounts of wages paid to, and self-employment income derived by, an individual during any period in such year shall be conclusive for the purpose of this title; section 205(c)(4)(B) provides that the absence of an entry in the Secretary's records as to the wages alleged to have been paid by an employer to an individual during any period in such year shall be presumptive evidence that no such wages were paid to such individual in such period; and section 205(c)(4)(C) provides that the absence of an entry in the Secretary's records as to the self-employment income alleged to have been derived by an individual in such year shall be conclusive that no such alleged self-employment income was derived in such year unless it is shown that he or she filed a tax return of his or her self-employment income for such year before the expiration of the time limitation following such year, in which case the Secretary shall include in his records the self-employment income of such individual for such year.

Section 205(c)(5) of the Act provides for those situations when the Secretary may change or delete any entry or include any omitted item on an earnings record after the expiration of the time limitation.

20 CFR 422.125(f) provides that if an individual disagrees with a statement of earnings credited to his or her Social Security record, he or she may request a revision. 20 CFR 404.820(b)(4) states that a request should describe or have attached to it any available evidence that shows that the earnings record is incorrect. 20 CFR 404.821 and 404.822 provide for corrections to be made to an individual's earnings record ". . . if satisfactory evidence shows SSA records are incorrect. . . ."

POLICY INTERPRETATION

Individual's Responsibility

When an individual asks for correction of his or her earnings record, it is that person's responsibility to provide evidence to the Social Security Administration (SSA) to support the allegation that the record is incorrect. This evidence must be sufficient to raise a reasonable doubt about the correctness of the individual's earnings record. (The Secretary is entitled to rely on the presumption provided in the Act that the earnings record he or she maintains is correct if there is no satisfactory evidence showing that the record is incorrect.) Such evidence may consist of:

1. A form W-2 (Withholding Tax Statement) or W-2C (Statement of Corrected Income and Tax Amounts);
2. A statement signed by the employer or signed by the custodian of the employer's records; or
3. In cases of alleged self-employment income, a copy of Form 1040, Schedules C, F and SD, and proof that the return was filed within 3 years, 3 months and 15 days of the end of the taxable year at issue.

Items 1, 2, and 3 are considered primary (preferred) evidence. If the individual provides a reasonable explanation as to why preferred evidence is not available, then the following types of secondary evidence may be provided:

4. Pay envelopes, vouchers, and similar unsigned employer wage statements to the individual, a State agency, or Federal agency;
5. Award letters or other notices provided the individual by a State Unemployment Compensation Agency based on information provided the Agency other than an employer's records;

6. Union record of dues and wages paid the individual; and/or
7. An individual's copy of Federal, State, or local income tax returns.

Items 4–7 are considered secondary evidence of high probative value. The individual should submit primary evidence if it is at all possible to do so; if not, he or she should provide (1) a reasonable explanation of why it is not available and (2) secondary evidence with the request for correction. If secondary evidence is also unavailable, the individual should provide a reasonable explanation of why it is not available. He or she should include, in that case, any evidence that can be produced (for example, personal records or account books; signed statements of coworkers or others who have first-hand knowledge about the wages paid or the self-employment income received).

SSA's Investigation

If a request for correction is received that does not include satisfactory evidence or a reasonable explanation as to why neither primary nor secondary evidence is available, SSA will begin its investigation by requesting such evidence from the individual. The individual will be informed that it is his or her responsibility to provide preferred evidence if it is available. He or she will be advised concerning what constitutes primary and secondary evidence and what to do if neither can be obtained. The individual will generally be responsible for providing the evidence within 30 days of SSA's initial request. If no response is received within 30 days, the individual will be given written notice by SSA that he or she has 15 days to submit the evidence or to provide a reasonable explanation of why it is not available.

If the individual does not respond to the second request, SSA will conclude its investigation and deny the request to correct the earnings record. If the individual responds and alleges that he or she will be able to provide evidence within 30 days after the end of the time limitation, a 30-day extension will be granted.

An explanation of why primary and/or secondary evidence is not available will be considered reasonable by SSA if:

A. The individual alleges that there are more earnings or self-employment income posted to his or her earnings record than there should be and signs a statement disclaiming the excess earnings (this usually occurs when another person's earnings have been erroneously reported to the individual's record);

B. The individual provides a credible reason for the unavailability of the evidence and establishes that he or she has made reasonable efforts to obtain evidence without success.

Example: There is reason to believe that employer records are or should be available, the individual provides a copy of a letter sent to the employer requesting evidence, and the employer either failed to respond or refused to provide evidence.

In these cases, SSA will attempt to contact the employer and request the evidence. If necessary, SSA may subpoena the employer records;

C. The individual provides a credible reason for the unavailability of the evidence; makes a credible assertion that the earnings were covered under Social Security; and establishes that the employer cannot provide evidence.

Example: The individual provides a letter or statement from the employer stating that the individual did work (or could have worked) for the employer during the year(s) in question but the records have since been destroyed.

In these cases, the individual must provide: the employer's name and location (city and State), the period involved, and the approximate amount of earnings.

In the last two cases (i.e., the individual has established that the employer will not or cannot provide evidence), SSA records will be checked to determine whether they show that the employer filed a Social Security wage report for the period in question. If a wage report was filed, SSA will make a special search of its "Suspense File." This file contains earnings items reported under an invalid Social Security number or wrong name that have not yet been credited to any individual's earnings record. SSA will, upon completion of this search, determine if the individual's earnings appear in the Suspense File and if so, take the necessary action to allocate the earnings to the individual's earnings record. SSA will conduct this special search only if all other means of obtaining evidence have been exhausted.

D. The individual makes a credible assertion that earnings will not be reported and this fact cannot be verified because the earnings in question are for a "lag" period (i.e., the earnings are for the calendar year preceding the year the request is made and they may not have been posted to SSA's records yet).

Example: The individual requests correction of 1986 earnings in April 1987 and asserts that either the employer did not ask for the employee's Social Security number, the employer did not withhold Social Security taxes, or the employer did not provide the individual a form W–2.

In these cases, SSA will contact the employer to request primary evidence, when necessary, and will take other steps, if appropriate, to pursue the investigation. (Note: If the individual believes his or her current year's earnings will not be reported, the individual will be advised to file a correction request the following February, if a W–2 is not received in January.);

E. The individual provides a credible reason for the unavailability of the evidence and alleges that agricultural wages were paid to him or her for migrant farm work and that the employer did not file Social Security wage reports.

Example: The individual (a migrant farm worker) did not receive (or did not retain) any evidence of his or her earnings because of frequent changes of residence or failure to understand the importance of the documents and asserts that either the employer did not ask for the employee's Social Security number, the employer did not withhold Social Security taxes, or the employer did not provide the individual a form W–2.

> In these cases, SSA will assist the individual to obtain evidence sufficient to make a determination, including as necessary evidence needed to determine: the identity of the employer (between a crew leader or the farm owner), whether the amounts paid constitute wages, and the amounts of wages paid and dates of employment. When the migrant worker has no documentary evidence of amounts paid and dates of employment, SSA will assist in obtaining signed statements from fellow migrant workers and any other person(s), including a family member, who has actual knowledge (not hearsay) of the individual's employment.

In all cases where an individual requests correction of an earnings record, a decision to grant or deny the request will be made only after reviewing all the evidence submitted by the individual or developed by SSA during its investigation. The initial determination, which may be appealed by the individual, will be made on the basis of the available information, generally within 3 years of the date the request is filed, and in no event later than 3 years, 3 months, and 15 days from that date.

EFFECTIVE DATE: Upon publication

FURTHER INFORMATION: None

CROSS REFERENCES: Program Operations Manual System, Sections RM 03870.004, RM 03870.008, RM 03870.072, RS 01403.253

SECTION 210(a)(5) OF THE SOCIAL SECURITY ACT (42 U.S.C. 410(a)(5)) COVERAGE OF WORK FOR U.S. INSTRUMENTALITIES—EMPLOYEES OF THE CIVILIAN CONSERVATION CORPS

20 CFR 404.1018 **SSR 87-18c**

Vacchio v. Heckler, 794 F.2d 154 (4th Cir. 1986)

The Secretary determined that the claimant's service in the Civilian Conservation Corps (CCC) from 1937 to 1941 was not covered employment and denied the claimant's application for old-age insurance benefits (OAIB) because he had only 13 of the 27 quarters of coverage necessary for him to be fully insured as required by the Social Security Act. The Secretary's decision was upheld by the district court. On appeal, the Court of Appeals noted that the CCC was created by an act of Congress, was directly administered by the Executive Branch, was wholly funded through the Federal Government, and that levels of compensation for services performed in the CCC were determined by the President. In view of these characteristics, the Court found that it was beyond dispute that the CCC was an instrumentality of the Government. Therefore, the claimant did not acquire any quarters of coverage during the period in question on the basis of his service in the CCC because that employment was excluded from coverage under section 210(b)(5) of the Social Security Act of 1935. Consequently, the Court of Appeals concluded that the claimant lacked the requisite number of quarters of coverage for a fully insured status and thus, was not entitled to OAIB.[*] Although the claimant

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[*] Section 209(b)(6) of the Act, which succeeded section 210(b)(5) effective January 1, 1940, excluded from coverage "[s]ervices performed in the employ of the United States Government, or of an *instrumentality* of the United States which is (A) *wholly owned by the United States*, or (B) exempt from the tax imposed by section 1410 of the Internal Revenue Code by virtue of any other provision of law." Pub. L. 76–379, §20,1(1939)(emphasis added). Although the Court did not specifically address section 209(b)(6) of the Act with regard to the claimant's earnings for 1940 and 1941, there is nothing to indicate that the CCC was anything but an instrumentality wholly owned by the United States. Moreover, the Court's findings with respect to the CCC are wholly consistent with the conclusion that it was a wholly owned instrumentality of the United States.

Immigrants' Social Security Fraud Poses a Quandary

By Zita Arocha
Washington Post Staff Writer

The District government's decision this week to pardon some illegal immigrants who had committed fraud to obtain driver's licenses poses challenging legal and ethical questions for lawyers and federal authorities: Should amnesty protect persons who misrepresented themselves by using phony identification from being prosecuted under federal and state laws?

While the District has decided forgiveness is the best policy in the cases of amnesty recipients who used phony Social Security numbers to obtain driver's licenses, other jurisdictions may not be so kind.

In most cases, illegal immigrants are still liable for breaking federal and state laws by using false names and Social Security numbers, and it will be up to the individual government agencies to decide if they will prosecute the offenders, officials said yesterday.

The inspector general's office of the Department of Health and Human Services said yesterday it would pursue cases of illegal immigrants who use fraudulent Social Security numbers even if they have received amnesty.

Under a new immigration law, illegal immigrants who have lived in this country since Jan. 1, 1982, are eligible for the amnesty program that leads to permanent legal status.

As more and more illegal immigrants receive amnesty—about 1.1 million have applied and more than half have been approved so far—the misrepresentation issue has grown in intensity. Immigrant advocates feel the illegal aliens who only misrepresented themselves so they could survive here should be pardoned by all governmental agencies.

But amnesty opponents caution against giving the immigrants a blanket pardon for past transgressions, saying that like all legal residents of this country they, too,

See AMNESTY, B2, Col. 1

WASHINGTON POST
4/9/88

Agencies Ponder Whether to Prosecute Immigrants for Social Security Fraud

AMNESTY, From B1

should be made to abide by our laws.

"Just because they are illegal doesn't mean they have a right to engage in wholesale fraud," said Dan Stein, executive director of the Federal for American Immigration Reform, a nonprofit group that lobbies for tighter controls on immigration.

Stein said some illegal aliens have used phony Social Security numbers to avoid paying federal taxes and to apply for student loans and other benefits that illegal aliens are not entitled to.

But Charles Kamasaki, a policy analyst for the National Council of La Raza, a group that lobbies on behalf of immigrants, said because the primary purpose of the amnesty program is to bring illegal aliens into the mainstream of society, "I can't imagine a single public purpose served by prosecuting these people.

"In most cases these people used a [fraudulent] Social Security number so they could work, rent an apartment, buy a car, get a driver's license and to function in society," he said.

The Immigration and Naturalization Service (INS) is prevented by a confidentiality provision in the new immigration law from sharing information about an amnesty applicant's past use of phony names and Social Security numbers with other state and federal agencies.

But Judy Holtz, a spokeswoman for the inspector general's office, said yesterday her office would investigate cases of amnesty recipients who use phony Social Security numbers if the agency comes across this information in another way—for example from an employer or friend. Those cases will then be referred to the U.S. attorney's office for possible prosecution, she said.

"If we find out [about the fraudulent use] of a Social Security number through other means then it's our mandate . . . to pursue those cases," Holtz said.

Fraudulent use of a Social Security number or falsification of a Social Security application is a federal crime that carries a penalty of a $5,000 fine and five years in prison.

Often illegal immigrants give false Social Security numbers when they apply for loans, credit cards, driver's licenses, or open bank accounts, immigration officials said.

Holtz said last year the inspector general's office investigated 800 cases that led to criminal prosecutions for Social Security fraud and that some involved illegal aliens who had used phony Social Security numbers. So far, however, her office has not prosecuted any amnesty recipients for using phony numbers.

When legislators drafted the new immigration law containing the amnesty program, they said the illegal immigrant's past use of phony identification would not bar him from receiving amnesty.

However, lawmakers did not address the issue of whether amnesty recipients should be pardoned for having violated federal, state and local laws dealing with false identification.

This week, the District government became one of the first jurisdictions in the country to grapple with the problem when it decided to forgive amnesty recipients who have used fake Social Security numbers to obtain D.C. driver's licenses. The act is a misdemeanor under D.C. law and punishable by a $300 fine or 10-day jail term.

D.C. officials said if the amnesty recipient has a good driving record and meets the testing requirements he would be issued a new license under his new Social Security number.

"The District should be commended for doing that," said Wade Henderson, a lawyer who heads the Washington office of the American Civil Liberties Union, adding that he believes it is a "violation of the spirit" of the new immigration law for states and other federal agencies to prosecute amnesty recipients for misrepresenting their identities.

STATEMENT OF JAMES M. PEIRCE, PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Mr. Moody. Mr. Peirce.

Mr. Peirce. Thank you, Mr. Chairman. I will summarize very briefly to avoid being redundant. I would request my statement be entered into the record.

Mr. Moody. Yes.

Mr. Peirce. I appreciate the opportunity to appear today and discuss some of the proposals to improve the quality services provided by Social Security Administration. H.R. 5250, we consider a very good bill.

Our testimony will focus on the redesign of the agency's telephone system and establishment of a national 800 number. Again, to summarize, we have a real feeling that SAA is getting way from people, that this is a move to actually reduce the face to face operation which we believe is so important.

Another aspect of this face to face is the fact that claims representatives in the offices become very, very, I think, close to the people they are serving, to the extent that they establish not only a rapport, but credibility. We find that most of the individuals will come back asking to see the particular claims person which they have seen before. Telecommunications undoubtedly will have a serious impact, I think on that aspect of it.

Maybe more important is the fact that only face to face can you really determine whether or not you have achieved an understanding. We feel it is virtually impossible, if not impossible, period, to do that over the telephone.

As mentioned earlier in our statement, Social Security Administration seems to have a hidden agenda, in our opinion, to promote tele-servicing to the detriment of this face to face service. Our NFFE members employed at Social Security Administration district offices tell us that as of October 1, 1988 a plan to begin mechanically intercepting calls from the public intended for Social Security Administration local offices, and reroute the calls to the tele-service centers in other cities.

Some of these cities will be a great distance from where the caller lives. We question how this can improve efficiency. This move by Social Security Administration seems to undermine the relationship that I just spoke of concerning the claimants with their local office.

NFFE members also tell us that often when claimants come in to file for benefits in person, they are sent home with an appointment for a time when a Social Security Administration employee will call them. Employees then have to list that as a transaction in the tele-service claims area. This just seems to be ridiculous. The obvious attempt to boost a number of tele-service claims for any direct office is misleading, and does nothing to promote a rational discussion of the public's reception of the tele-service program.

There are too many questions outstanding, we feel about the Social Security Administration tele-service program, which NFFE feels must be answered before the program is allowed to develop any further. We can see a real, I think, disservice from the standpoint of reduction as far as claims representatives as opposed to other, less trained employees who we would consider there only to answer the telephone, rather than to provide those necessary services that our people need.

We look forward to working with the subcommittee to make sure the answers are discovered and we will provide anything we would find in the future that would bear on this matter.

Thank you.

[The statement of Mr. Peirce follows:]

STATEMENT

BY

THE NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Mr. Chairman and Subcommittee Members:

On behalf of the National Federation of Federal Employees, which represents a significant number of Social Security Administration employees across the country, I appreciate the opportunity to appear today and discuss some of the proposals to improve the quality of services provided by SSA. Our testimony will focus on the redesign of the agency's telephone syswtem and the establishment of a national "800" number.

The proposal for the toll-free telephone system is deceptively simple and at first blush seems like an efficient move on SSA's part to reach out to the community it serves. We believe instead that it is an attempt to depersonalize SSA service and evidences a callous disregard for the individuals served by the agency. Providing the option of telephone service would be helpful to SSA's claimants, but we feel there is a hidden agenda to eventually force teleservice on all claimants.

Justification for the SSA's teleservice center rests on the theory that centralization will provide more efficient service, and that once claimants have the opportunity to use a toll-free telephone number, they will no longer want to file for claims or handle benefit problems in person. We could not disagree more strongly with this theory.

The centralization plan would become a self-perpetuating, self-fulfilling prophesy once it was begun. Introduction of a toll-free number would be accompanied by a reduction in staff at the district offices. As claimants had to wait longer and longer to speak to an SSA employee in person, they would become discouraged and attempt to handle their questions and problems by telephone. With an increase in the number of telephone calls, the local staff would most likely be further reduced, touching off even slower service at those offices that remained open. Eventually individuals who wished to file their claims or be assisted with a post entitlement problem in person could face a journey to one of the 20 Central Offices left in the country. This kind of journey would be an expensive proposition for most individuals. For the typical SSA claimant it would be an impossibility.

The ability to file claims or address benefit questions in person is important, and this becomes obvious when one looks at the types of original documents necessary to process claims. Claimants must provide original birth certificates, marriage licenses, divorce decrees and military discharge papers in order to qualify for payments. Constructing a nationwide teleservice system will not alter this requirement. Beneficiaries may, of course, choose to mail these original documents to SSA. This option is available at present. And yet, the majority prefer not to let these important documents out of their possession. They would rather come into the SSA office, have official copies made while they wait, and then take their documents back home with them. In many cases now, individuals actually go through all the steps necessary to file a claim with SSA over the telephone, but still come in with the necessary documents.

It is also important to understand the limitations of the average social security or Supplemental Security Income beneficiary. They are typically the elderly, the mentally or physically challenged, and survivors. NFFE's SSA employees have found that it is most effective to deal with these individuals face-to-face. Many of the beneficiaries develop a special rapport with a particular employee. They will come into the office and wait until they can see the one individual whom they trust. This carefully crafted relationship enables SSA employees to deal with the most difficult and painful problems claimants encounter.

These employees have built up the necessary goodwill, for example, to succeed in explaining why a beneficiary must return an overpayment to the agency, and have the claimant understand and comply. Virtually every employee eventually acquires one or two special claimants with whom only they are able to cope. When they are not available, many beneficiaries simply refuse to discuss their case until their "special" employee has returned. Maintaining the option of developing this type of rapport with an SSA employee would naturally be eliminated through the creation of a nationwide teleservice center and the attendant reduction in staffed SSA offices.

Another important aspect of a face-to-face discussion of a claim is the ability of the employee to determine whether the beneficiary has understood such complicated issues as reporting responsibilities. In other cases, an SSA employee is able to help a hearing-impaired individual file a claim by writing out all the information, and having the claimant write down any questions. Such attention to the comprehension of detail by a claimant would also be impossible through a telephone call.

Members of the Subcommittee may be unaware that the processing of telephone claims requires more paperwork than a face-to-face claim. Employees must send out a notice telling claimants that they have 60 days to return certain documents and then a second notice that they have 30 days to return other forms. When a claim is filed in an SSA office, these notices are unnecessary because the work is done while the claimant is present. With the severe reduction in clerical workers already plaguing SSA offices, a massive increase in the number of teleservice claims will likely swamp the system.

A further problem with teleservice claims arises when claimants file for questionable disability benefits. A claimant
with a broken leg might ask for benefits and the SSA employee is required to fill out the paperwork although he or she realizes the claim is likely to be denied. Most claimants ask if their requests are likely to be granted. When the claimant is in an SSA office and learns that his or her claim will probably be denied, it is a simple matter for the individual to sign the appropriate line. A telephone claim is different, however. Forms must be sent to the claimant, and he or she must return them to SSA. Not surprisingly, many claimants feel no need to return the signed forms, since they have realized that they will not be receiving benefits. The SSA employee, however, must send letters to the individual requesting that the appropriate forms be signed and returned so that the file can be closed. If all SSA claims must be handled through telephone calls, the backlog in SSI cases, especially, will be enormous.

SSA employees are also able to build up a network of contacts in their areas that enables them to deal swiftly with eligibility questions for claimants. A question of whether assistance from local religious groups need be counted as income for a beneficiary, for example, is handled much more easily by SSA employees familiar with the areas in which the claimants live.

Not the least of the benefits for maintaining an extensive network of SSA offices is the opportunity it offers for the Federal Government to have a "face" for the taxpayers. There are only three agencies that every American deals with: the Internal Revenue Service, the Postal Service and the Social Security Administration. The IRS, which has its own problems with toll-free numbers, is not fondly regarded by most Americans. The Postal Service has seen a decline in its popularity over the past two decades. The SSA is the last face-to-face contact many taxpayers have left with their Government. This is an important asset, and not one to be thrown away lightly.

The allure of a centralized telephone system has disadvantages which might not be immediately obvious. When the Veterans Administration moved to a central office system, there was such an outcry from the veterans groups that many counties now staff veterans assistance centers. In addition, VA makes use of its extensive hospital system where claims may be filed. The SSA has no similar facilities, and it must be recognized that SSA not only deals with all the individuals who are aided by the VA, it must assist all the non-veterans as well.

If teleservicing is supposed to ease the burden of filing or receiving SSA claims, NFFE questions why the agency has chosen to have most of the telephone calls answered by service representatives, rather than claims representatives. Service representatives typically handle questions and problems arising with claimants who are already receiving SSA benefits. Claims representatives have the more complicated task of helping individuals file for benefits in the first place. SSA has assigned employees who are not trained for questions from first-time claimants to answer phone lines. Then the agency encourages first-time claimants to utilize these improperly staffed phones. NFFE estimates that approximately 50% of all calls to SSA would concern first-time claimants and as such should be answered by claims representatives. NFFE feels this simple management decision speaks volumes about the lack of commitment by SSA to the individuals the agency serves.

NFFE would like to make it clear that we are not opposed to teleservicing per se. On the contrary, it works well in the installations represented by NFFE. But it only works well because the option of a face-to-face interview has been maintained. We feel that it is essential to maintain this option for SSA claimants and that any survey of public preferences would bolster our position. Americans pay into the Social Security system all through their working lives, and when they need the benefits of that system, they deserve to speak to an employee face-to-face if they want to.

Yet, as mentioned earlier, SSA seems to have a hidden agenda to promote teleservicing to the detriment of face-to-face service. NFFE members employed at SSA district offices tell us that as of October 1, 1988, SSA plans to begin mechanically intercepting calls from the public intended for SSA local offices and reroute the calls to teleservice centers in other cities. Some of these cities will be a great distance from where the caller lives. For example, beginning in a few weeks, calls will be intercepted from the Tyler, Texas office and rerouted to Grand Prairie, Texas, some 150 miles away. We question how this can improve efficiency. This move by SSA undermines the relationship that claimants have with their local offices. In many cases claimants will be unable to speak with an SSA employee with whom they have developed a special rapport.

NFFE members also tell us that often when claimants come in to file for benefits in person, they are sent home with an appointment for a time when an SSA employee will call them. Employees then list that transaction as a teleservice claim. We think the Subcommittee members will agree that this is a silly, counterproductive practice which should be stopped. The obvious attempt to boost the number of teleservice claims for any district office is misleading and does nothing to promote a rational discussion of the public's acceptance of a teleservice program.

There are too many questions outstanding about the SSA teleservice program which NFFE feels must be answered before the program is allowed to develop any further. We look forward to working with this Subcommittee to make sure the answers are discovered.

This concludes my statement. I will be pleased to answer any questions.

Mr. Moody. Why don't we her from Mr. Black and then we will go to questions.

STATEMENT OF GORHAM BLACK, MEMBER, NATIONAL LEGISLATIVE COUNCIL, AMERICAN ASSOCIATION OF RETIRED PERSONS, AND CHAIRMAN, AARP PENNSYLVANIA STATE LEGISLATIVE COMMITTEE

Mr. Black. Good afternoon, Mr. Chairman, my name is Gorham Black, Jr., and I am a member of the National Legislative Council of the American Association of Retired Persons. I am also Chairman of AARP's Pennsylvania State Legislative Committee.

We commend the Chairman and members of the committee for their interest in improving the quality of services provided by the Social Security Administration to beneficiaries.

Social security is a family program which affects Americans of all ages. It provides essential protection to workers and their families when they retire by choice or as a result of disability, as well as to the beneficiaries decedents.

AARP supports H.R. 5250, the Social Security Beneficiary Protection Act, introduced by Representatives Levin and Moody. The bill contains important procedural protections that would help ensure that individuals receive fair, courteous and responsive treatment from Social Security Administration.

While some individuals experience difficulty in contacting the Social Security Administration staff by telephone or letter, some other callers receive incorrect or incomplete information. In preparation for this testimony, I, called the listed number of our Social Security office in Harrisburg, PA., and as usual, it was busy. However, I have an unlisted number I received from my Congressman's office, and when I dialed it, they answered that right away.

In one instance of misinformation, a 60 year old widow was subjected to a costly fine for not following a procedure that she was unaware of. The widow began receiving benefits when she turned 60. During the last year she worked before fully retiring, she earned $675.22 over the maximum allowed for full benefits. She realized that she had to recompense $1 for every $2 over the maximum allowed, but she did not know when the money was due.

On May 5, she sent $337.61 to the Social Security Administration with a letter of explanation. After six phone calls from the Social Security Administration asking her why she sent in the money, the Social Security Administration returned 61 cents with her November Social Security benefit payment, explaining that only the even amount was necessary. However, almost immediately, the Social Security Administration fined the widow for not paying by April 15 with the proper form filled out. The woman had acted in good faith but had not been apprised of all the necessary information in a timely manner. Yet, the Social Security Administration still fined her.

Some beneficiaries attempted to get information by writing to the Social Security Administration with equally little success. A man from the D.C. area contacted AARP after calls and letters to the local Social Security Administration office. He wanted an answer to a very basic question—what type of benefits will my wife receive when we retire?

Many who visit the Social Security Administration office in order to get the necessary information continue to find themselves entangled in bureaucracy. First of all, several AARP members have reported extended waits at local offices, even when they were given an appointment. This is all the more disquieting because the Social Security Administration has long prided itself on good public service.

As a regional director of region 3 of HEW, during the 1970's, I had firsthand knowledge of the excellent services the Social Security Administration rendered to our public. Any organization as large as the Social Security Administration will have some problems. Serving than 38 million beneficiaries is a daunting task.

Within the last decade, however, the Social Security Administration has undergone considerable changes that have affected the quality of service. There have been several leadership changes which apparently have resulted in a lack of continuity as well as decreased employee morale.

In addition to management changes, the Social Security Administration staffing levels have been cut as part of an OMB mandated staff reduction. AARP is concerned that a significantly smaller staff would damage the agency's level of operations, as well as its ability to respond to the future needs of an expanding constituent population.

While the association acknowledges that in many Social Security Administration offices clients do receive good service, we observe that overall, the quality of service is uneven nationwide. The problems our members have alerted us to lead us to conclude that in too many cases quality service is compromised in order to accommodate quantitative staffing and productivity standards.

H.R. 5250 promises to be an important step in mitigating many of the concerns highlighted in this testimony. We hope that the committee will act favorably on the bill.

We thank the committee for allowing us the opportunity to testify.

Mr. Moody. Than you very much, Mr. Black.

[The statement of Mr. Black follows:]

AARP

STATEMENT

of the

AMERICAN ASSOCIATION OF RETIRED PERSONS

before the

SUBCOMMITTEE ON SOCIAL SECURITY

of the

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

on

PROPOSALS TO IMPROVE THE QUALITY OF SERVICE
PROVIDED BY THE SOCIAL SECURITY ADMINISTRATION

SEPTEMBER 22, 1988

The American Association of Retired Persons (AARP) appreciates this opportunity to present its views on proposals to improve the quality of service provided by the Social Security Administration (SSA). We commend the committee for its interest in an issue which affects the lives of today's and tomorrow's older Americans. We believe that H.R. 5250, the Social Security Beneficiary Protection Act, introduced by Representatives Levin and Moody, contains important procedural protection that, if enacted, would help ensure that people receive fair, courteous and responsive treatment from SSA.

First and foremost, Social Security is a family program, affecting Americans of all ages. It provides essential protection to workers and their families when they retire by choice or as a result of a disability, and also to the loved ones that deceased workers leave behind. This protection is earned by workers through years of contributions; it is an entitlement, which they deservedly expect to receive.

SOCIAL SECURITY: SSA'S VITAL ROLE

SSA has been entrusted with the considerable responsibility of administering this essential social insurance program. During the more than 53 years of Social Security's existence, the scope of the programs administered by SSA has increased, and the beneficiary population has multiplied dramatically. Today, over 38 million people of all ages receive Social Security benefits. And as America ages, SSA's benefits will extend to an even larger proportion of the population. SSA is beginning to anticipate these future needs through greater automation and other modernizations. However, SSA must be more careful about sacrificing service in the name of efficiency.

SSA has prided itself on service to the public. Within the last decade, however, SSA has undergone considerable changes that have affected service. First, the position of Commissioner of Social Security has changed hands several times. As a result, a sense of continuity, essential to the program, has been missing. Employees, especially top level management, have had to cope with differing leadership styles, policies and management priorities. These differences inevitably percolate down thru the ranks, where they have produced confusion, and deteriorating staff morale.

In addition to leadership changes, SSA staffing levels have been cut as part of a 5 year, OMB-ordered, 17,000 person staff reduction. While steady staff reductions actually began in 1977, the 1985 plan represented, in sheer magnitude, a drastic departure from previous policies.

AARP has voiced its concerns that a significantly smaller staff would damage the agency's current level of operations as well as its ability to respond to the future needs of an expanding constituent population. While we believe that in many SSA offices clients do receive good service, service is uneven nationwide.

The reports that we have been hearing about service delivery confirm our fears, and some disturbing patterns are emerging. While all organization's have some administrative shortcomings, we are especially concerned about SSA's service delivery problems because they create unnecessary problems for beneficiaries, and sometimes can result in extreme hardship.

ACCESS TO BASIC INFORMATION

Access to program information and procedures is a threshold requirements for SSA's clients. The SSA office is the link between the public and the program. Beneficiaries should have reasonable access to office personnel and equally important be able to receive prompt and understandable information about Social Security and their status in that program.

Too often individual's seeking information from SSA find only frustration. We continue to receive complaints from those who hear a busy signal or a recording placing them on hold instead of a voice asking "How may I help you?". In fact, two General Accounting Office (GAO) studies issued in 1987 found serious problems with telephone accessibility despite SSA's efforts to improve. One report found that 40 percent of the calls placed to the agency's teleservice centers resulted in disconnections, busy signals, or being placed on hold. For some older Americans who do not have a telephone, such inaccessibility is doubly frustrating and inconvenient, because they must locate a phone elsewhere. While the 24 hour toll free number that will go into effect soon should reduce busy signals in active offices, there is likely to be no continuity for any individual needing clarification or further information.

In addition, some beneficiaries report little success in writing for information. A man from the D.C. area contacted AARP after repeated calls and two letters to the local SSA office proved useless. He had a very basic question -- "What type of benefits will my wife receive when we retire?". We also received a letter from a man in California urgently requesting that we to provide him with information about Social Security disability benefits because the two letters he had written to his local office had gone unanswered for several months.

Furthermore, we understand that a limited printing budget has depleted and, in some cases, exhausted the supply of basic informational brochures in many SSA offices. In some cases, instead of being prominently displayed, informational brochures now must be requested from staff. If a person is unable to get basic printed information, he or she may have no alternative but to call or visit already overburdened offices.

Some of those visiting an SSA local office report extended waits. Even after they get to a claims representative, they may encounter an overworked and frustrated employee, unable to spend adequate time with a beneficiary because of SSA-imposed quantitative performance standards. Some visitors complain that responses, once given, are rapid and sometimes confusing. "Clarifications", said one writer, "sound the same as the original explanation."

More serious than unanswered requests for information is misinformation. Often communicated by telephone, these mistakes could result in a permanent loss of benefits or an unnecessary delay. Two recent examples of misinformation dramatically illustrate the importance of the proposed telephone service center accountability project provided in H.R. 5250. In this first instance, one of our members had been told at age 62 that she was ineligible for any spousal benefit although her husband had retired and was receiving a benefit. She did not apply, but three years later she decided "to apply for Medicare benefits." At that time, an SSA employee advised her that she was and had always been eligible for Social Security. Understandably upset, she applied for and began receiving a benefit equal to half of her husband's benefits. She is currently appealing the effective date of benefits. To date, she has been denied an earlier effective date because she never formally applied for benefits at age 62. If the misinformation provided had been officially recorded, this woman might be able to win an appeal.

In the second case, a woman age 62 received a benefit based on her record because her husband had not retired. When she applied for her benefit, she was told that when her husband stopped working she would not be able to convert to a spousal benefit even though it would be a higher. Luckily she heard about a friend who was able to collect a spousal benefit at 65 after having received a benefit on her own record. When she contacted us, we explained the matter. Fortunately, she got the correct information before she lost any spousal benefits.

Both of these examples also illustrate the importance of the provision in H.R. 5250 protecting the rights of claimants to benefits for which they otherwise would have been eligible but for an earlier, inappropriate denial of benefits. Even if the amount of benefits lost may seem small, the claimant has been unfairly denied a benefit through no fault of his or her own.

COLLECTION OF OVERPAYMENTS

We also have received letters and calls about difficulties experienced by members regarding SSA's overpayment recoupment process. In many instances, the overpayment results from a misunderstanding of procedures; yet many individuals are treated punitively like criminals intending to defraud the government. Additionally, some overpayment notices are confusing and lack an adequate explanation of repayment and/or appeals procedures.

About a month ago, a woman called us regarding overpayments from SSA. She kept contacting her local office each month to advise them of the error and to return the checks. Staff insisted they were working to correct their records. The overpayments continued for five months nonetheless. At one point someone at the local office suggested she keep the money since it probably belonged to her! Fortunately, she did not do this.

In another instance, a woman who had applied for benefits nine months prior to reaching age 65 decided a week later to rescind her application until she turned 65. On several occasions, she signed revocation forms at the local office at their request; nonetheless, she received 6 monthly benefits checks. She returned six unopened SSA envelopes by writing "return to sender" on each one. Also, she kept contacting the local office to stop the checks from being issued.

Several days after it became apparent that a seventh check was not forthcoming, she went to apply for her benefit. (Coincidentally, it was 3 months before she turned 65). The Social Security office informed her that since she had not returned one of their checks, she could not begin receiving a monthly benefit. Over the next several months, she had to draw down her savings to pay her bills. In desperation, she contacted the local office about getting a benefit check. A sympathetic SSA employee finally arranged for her to receive two emergency checks. Unfortunately, the matter of the overpayment was unresolved at the time of her letter to us, sixteen months after her initial application. The standard for recouping this "overpayment"--no benefits until SSA had been reimbursed--imposed a real hardship on this woman not to mention the months of frustration and anxiety it has caused.

Finally, the following letter points out the need for more reasonable overpayment standards along the lines provided in H.R. 5250.

> A friend of ours is a widow whose husband was receiving Social Security (SS) payments before he died. When she turned 60 she began receiving 75% of her husband's previous SS benefits. In 1986, the last year she worked before fully retiring, she earned $675.22 more than the $5,760 maximum allowed at that time for full SS payments. She realized that she had to pay back one dollar for every two dollars over the maximum allowed but did not know when it was due. On May 5, 1987 (right after she received interest from a CD) she sent $337.61 to the Social Security Administration (SSA) in Morristown, New Jersey (close to where she lives) with a letter of explanation. After six phone calls asking her why she sent in the money, the SSA returned $.61 with her November 1987 SS payment saying it wasn't necessary. Then they turned around and fined her . . . for not paying by April 15, 1987 with the proper form filled out. This money was taken out of her February 1988 check, and she is now struggling to make ends meet.

The woman had acted in good faith and a more reasonable repayment schedule would have been the reasonable and compassionate thing to do.

READABILITY OF NOTICES

SSA clearly has made strides in improving the readability and understandability of their notices. For example, in some overpayment notices, the tone is softer and less threatening. Also, the new award notice is much easier to read. However, much more can be done to make all notices readable, simple to understand and nonthreatening.

We support the provision in H.R. 5250 that all notices contain the name, address, and telephone number of an SSA contact person. We would recommend that the named SSA employee not only be from a nearby SSA office, but also that their job responsibilities enable them to discuss knowledgeably the matter with the caller in a timely manner. We recommend the named SSA employee be a caseworker rather than the highest ranking person who might be too busy with administrative duties to return a call in a timely manner or solve a difficult case problem. Also, we believe copies of the notices should be generated and brought to the attention of the employee identified in the notice, so that they become familiar with the case.

EARNINGS RECORDS

This Committee recently examined the matter of improperly credited SSA wage records. We support H.R. 5250's approach to the problem. Waiving the statute of limitation for correcting earnings records is critical because the backlog reported by the General Accounting Office extended back as far as 1978. Also, prospective applicants, as provided in H.R. 5250, should be advised of the problem and also receive a copy of their wage record.

The Association believes that those in the workforce are also entitled to a one-time notice stating the problem and advising them of the need to check their records. Undoubtedly workers requesting the new Personal Earnings and Benefit Estimate Statement will receive an earnings statement. However, a notice to all taxpayers, along with the 1040 form, will bring the matter to more people's attention.

CONCLUSION

AARP believes the Social Security Administration must rededicate itself to providing the best service to beneficiaries across the country. As Commissioner Hardy so aptly expressed it, "the American people whose lives we touch deserve prompt, courteous and efficient service, and fair and dignified treatment." We too believe that SSA should be run efficiently--with appropriate staffing levels, qualified management, state of the art technology, and an eye toward improved productivity. However, the problems our members have alerted us to, lead us to conclude that in too many recent cases the concept of quality service is being sacrificed in order to accommodate quantitative staffing and productivity standards.

Even the favorable ratings reported by the GAO indicate that a sizeable percent of those surveyed rated service as fair or poor. In a program the size of Social Security, that translates into millions of dissatisfied Americans. We think that the voices of affected beneficiaries are not being heard adequately on his issue.

Finally, AARP believes that H.R. 5250 contains some important and reasonable procedural protections that will help ensure fairer treatment and proper benefit amounts for those who have contact with SSA. We hope the Committee will act promptly and favorably on the bill.

Mr. **Moody**. I thank all three of you.

Any questions from the panel?

Mr. **Levin**. Well, quickly, if I might, thanks to all of you for your excellent testimony.

Ms. Sweeney, the staff—I guess they received your document this morning in terms of the response to information regarding illegal aliens. It might help, before you leave, if you could just highlight the portions of our documentation which relate to discouragement by Social Security Administration. They have picked out one memo from a regional commissioner in Kansas City to all assistant regional commissioners.

Ms. **Sweeney**. I think there is a Denver regional memo. I have a pile at the office of all the regional memos. I would be happy to supply that.

Mr. **Levin**. Would you do that, because all of us are vitally interested in this aspect, as well as the others.

Ms. **Sweeney**. One interesting thing about the FOIA request is that there are huge blacked out parts of memos on the aliens which Social Security Administration didn't supply to me, which the subcommittee might want to ask for. There are incredible blacked out pieces of memos about what they are doing on aliens, my guess is it had something to do with the criminal prosecution issue.

I have the Post article where it is clear that they got the message out. There are incredible deletions from the material. Seventy-three pages were withheld, plus deletions from the materials they provided to me.

I think there is a big story here that I have not gotten all the information on.

Mr. **Levin**. Thank you to all of you for your testimony.

Mr. **Moody**. Okay. Thank you all very much.

The Chair will announce that we are now in the process of going to a vote.

We will resume at 1:30 for certain.

[Whereupon, at 12:45 p.m., the subcommittee was recessed, to reconvene at 1:30 p.m., the afternoon of the same day.]

Mr. **Moody**. All right. We will continue with our last, but certainly not least panel, consisting of James Esper, president, Chapter 224, National Treasury Employee Union; Curtis Cook, executive director, National Indian Council on Aging; Peter Hughes, director of government relations, National Committee to Preserve Social Security and Medicare.

Thank you for coming and for being patient enough to let us get lunch as well as vote. Why don't we start in the order I announce you. Mr. Esper?

STATEMENT OF JAMES A. ESPER, PRESIDENT, CHAPTER 224, ATTORNEY, SSA OFFICE OF HEARINGS AND APPEALS, NATIONAL TREASURY EMPLOYEES UNION

Mr. **Esper**. Mr. Chairman and members of the subcommittee, I am James A. Esper, chapter president of Chapter 224 of the National Treasury Employees Union. Chapter 22 of the NTEU represents approximately 300 of the staff attorneys with SSA's Office of

Hearings and Appeals. I am pleased to be here today to discuss certain aspects of SSA's operations that may be improved so that SSA can enhance its ability to provide high quality service to the public.

My remarks will focus on the operation of SSA's Office of Hearings and Appeals. My primary purpose for being before you today is to propose a method of improving the adjudication of hearing appeals. Adjudication of requests for hearing appeals is currently performed by approximately 700 GS-15 administrative law judges.

In the processing of almost every hearing appeal an ALJ is assisted by a staff attorney or hearing analyst. The staff attorney or hearing analyst will thoroughly review the case usually after the ALJ has held a hearing and reached a decision. If there are no matters which require further action or the ALJ's attention, the staff attorney or hearing analysts will draft a decision for ALJ's review and signature.

NTEU proposes that non-ALJ staff attorneys be allowed to adjudicate certain requests for a hearing appeals. Not every hearing appeal is of such complexity as to require review by both an ALJ and also a staff attorney or hearing analyst. Having almost every hearing appeal case be reviewed by both an ALJ and also a staff attorney or hearing analyst, even though a significant number of such cases do not require such extensive review for accurate adjudication, is an inefficient use of personnel which results in delay of adjudication and in unnecessary cost.

Why is it that certain hearing appeal cases do not merit the attention of both an ALJ and also a staff attorney or hearing analyst? A case at the hearing appeal level often has evidence which was not present when the case was adjudicated at the reconsideration appeal level. Because cases at the hearing appeal level often contain evidence which was not present at the reconsideration appeal level, a significant number of hearing appeal cases are obvious allowances merely on the basis of the documentary evidence record.

These obvious allowances do not require the attention of both an ALJ and a staff attorney for accurate adjudication. When a case at the hearing appeal level becomes an obvious allowance, a staff attorney should be able to adjudicate the allowance without referring the case to an administrative law judge for further review.

Such ability to adjudicate obvious allowances would expedite the adjudication of hearing appeals and would allow the ALJ's to concentrate their time on the more difficult hearing appeal cases.

If after proper development the staff attorney is unable to adjudicate a case as an obvious allowance, the case should be referred to an ALJ without prejudice, for the ALJ's adjudication.

In conclusion, I believe that the efficient operation of SSA's Office of Hearing and Appeals is crucial for the provision of high quality and timely service to the public. I further believe that allowing staff attorneys to adjudicate some hearing appeals would facilitate the efficient operation of the Office of Hearings and Appeals.

Staff attorneys at the Office of Hearings and Appeals would be willing and able to accomplish such an additional task, therefore, I hope for your favorable response to this proposal. Allow me to add that after listening to the testimony by Congressman Clements this morning, I think his testimony provided practical examples as to why you do not want unnecessary hearing appeal cases going through a full ALJ hearing proceeding.

Thank you, and I am available for any questions you may have.

[The statement of Mr. Esper follows:]

NTEU
The National Treasury Employees Union

STATEMENT BY

JAMES A. ESPER
CHAPTER PRESIDENT
CHAPTER 224
THE NATIONAL TREASURY EMPLOYEES UNION

BEFORE THE
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON SOCIAL SECURITY
U.S. HOUSE OF REPRESENTATIVES

ON

SEPTEMBER 22, 1987

1730 K Street, N.W. • Suite 1100 • Washington, D.C. 20006 • (202) 785-4411

Mr. Chairman and Members of the Subcommittee:

I am James A. Esper, Chapter President of Chapter 224 of the National Treasury Employees Union. Chapter 224 of the NTEU represents approximately 300 of the staff-attorneys.

I am pleased to be here to discuss certain aspects of SSA's operations that may be improved so that SSA can enhance its ability to provide high-quality service to the public. My remarks will focus on the operation of SSA's Office of Hearings and Appeals.

By way of background, SSA's Office of Hearings and Appeals has approximately 400 staff-attorneys located in its field hearing offices, as well as some paralegal hearing analysts.

My primary purpose for being before you today is to propose a method for improving the adjudcation of hearing appeals.

Adjudication of requests for hearing appeals is currently performed by approximately 700 GS-15 Administrative Law Judges. In the processing of almost every hearing appeal, an ALJ is assisted by a staff-attorney or hearing analyst. The staff-attorney or hearing analyst will thoroughly review the case, usually after the ALJ has held a hearing and reached a decision. If there are no matters which require further action or the ALJ's attention, the staff-attorney or hearing analyst will then draft a decision for the ALJ's review and signature.

NTEU proposes that non-ALJ staff-attorneys be allowed to adjudicate certain requests for hearing appeals.

Not every hearing appeal case is of such complexity as to require review by both an ALJ and also a staff-attorney or hearing analyst. Having almost every hearing appeal case be reviewed by both an ALJ and also a staff-attorney or hearing analyst, even though a significant number of such cases do not require such extensive review for accurate adjudication, is an inefficient use of personnel which results in delay of adjudication and in unnecessary cost.

Why is it that certain hearing appeal cases do not merit the attention of both an ALJ and also a staff-attorney or hearing analyst? A case at the hearing appeal level often has evidence which was not present when the case was adjudicated at the reconsideration appeal level. This may occur simply because with the passage of time, more evidence has become available. Also, at the reconsideration appeal level, a claimant usually is not represented by an attorney. At the hearing appeal level, a claimant usually has legal representation, with the attorney having seen to it that the case has been thoroughly developed. Because cases at the hearing appeal level often contain evidence which was not present at the reconsideration appeal level, a significant number of hearing appeal cases are obvious allowances, merely on the basis of the documentary evidence of record. These obvious allowances do not require the attention of both an ALJ and a staff-attorney for accurate adjudication.

What type cases are obvious allowances? The vast majority of hearing appeal cases involve claims for disability benefits. With regard to disability cases, obvious allowances would include those cases where:

1) As a result of new evidence, the documentary evidence of record establishes that the claimant's medical condition meets or equals a Social Security medical listing; or

2) As a result of new evidence, the documentary evidence of record establishes that the claimant has exertional impairment(s) such that he fully meets the disability requirements of a medical-vocational guideline contained in Appendix 2 to Subpart P of Social Security Regulation No. 4 (i.e., the disability requirements of a "Grid Rule").

What type cases are not obvious allowances and, therefore, would merit the attention of both an ALJ and a staff-attorney? With regard to disability claims, such cases would include those where:

1) There is no significant new evidence;

2) The outcome of the case hinges upon the claimant having nonexertional impairment which the documentary evidence does not establish as meeting or equaling a Social Security medical listing;

3) The outcome of the case hinges upon the personal credibility of the claimant (For example, where the claimant alleges disabling type pain, and the objective medical evidence does not clearly show the claimant having a medical condition which would reasonably produce such type pain); or

4) The case requires the testimony of a vocational expert.

When a case at the hearing appeal level becomes an obvious allowance, a staff-attorney should be able to adjudicate the allowance without referring the case to an Administrative Law Judge for further review. Such ability to adjudcate obvious allowances would expedite the adjudication of hearing appeals and would allow the ALJs to concentrate their time on the more difficult hearing appeal cases. If after proper development, the staff-attorney is unable to adjudicate a case as an obvious allowance, the case should be referred to an ALJ, without prejudice, for the ALJ's adjudication.

Allowing staff-attorneys to adjudicate hearing appeal cases which are obvious allowances would result in other benefits. It would become cost effective to have staff-attorneys review cases prior to an ALJ hearing, for the purpose of helping to insure that the evidence of record is properly developed at the time of the ALJ hearing. Those cases which the staff-attorney could not adjudicate as an obvious allowance would at least be well developed at the time of the ALJ hearing, helping to reduce the considerable delay and inefficiency which can occur when new evidence is developed after an ALJ hearing. Better development of evidence could also improve the accuracy of ALJ decisions.

Some nondisability hearing appeals could also be adjudicated by staff-attorneys. Section 9341 of the Omnibus Budget Reconcilation Act of 1986 expanded the right of Medicare beneficiaries to have a hearing appeal with regard to Medicare claims. As of the present time, the Health Care Financing Administration (HCFA) has been unsuccessful in implementing a hearing appeal program for these appeals. As a result, SSA's Office of Hearings and Appeals may have the responsibility for adjudicating these Medicare hearing appeals. When attempting to implement its hearing appeal program, HCFA believed that the Medicare cases were less difficult to adjudicate than cases handled by ALJs in other agencies; therefore, HCFA proposed using GS-14 ALJs. I agree that most Medicare hearing appeals do not require GS-15 level adjudication. In my own opinion, such adjudication is at about the GS-13 level of difficulty. Therefore, if SSA's Office of Hearings and Appeals is assigned the responsibility to adjudicate the new Medicare appeals, I believe staff-attorneys should be able to perform some of the adjudication, as opposed to requiring GS-15 ALJs to adjucate all such appeals.

In conclusion, I believe that the efficient operation of SSA's Office of Hearings and Appeals is crucial for the provision of high-quality and timely service to the public. I further believe that allowing staff-attorneys to adjudicate some hearing appeals would facilitate the efficient operation of the Office of Hearings and Appeals. Staff-attorneys at the Office of Hearings and Appeals would be willing and able to accomplish such an additional task. Therefore, I hope for your favorable response to this proposal.

That concludes my prepared statement. I would be pleased to respond to questions you may have.

Mr. MOODY. Thank you very much.
Mr. Cook.

STATEMENT OF CURTIS D. COOK, EXECUTIVE DIRECTOR, NATIONAL INDIAN COUNCIL ON AGING

Mr. COOK. Thank you, Mr. Chairman. I would like to suggest that my testimony that I will present to you today arises out of 24 years of exposure to Indian programs in the Southwest of our United States, but also out of a growing knowledge of the conditions which obtain in other Indian reservations and states which have high Indian populations around our country.

It also grows out of a concern that many of our American Indian and Alaskan native elders and others are not being given the privilege of full participation in programs which are designed to provide benefits for them in their older years or during times when they are disabled and unable to make an income.

I would like to say that we appreciate very much the work of your committee, Mr. Chairman, and the other members of your committee, in working toward improving the services provided by the Social Security Administration. We especially commend you, Mr. Moody and you, Mr. Levin, for the introduction of this bill, H.R. 5250.

I would like to propose fundamental changes or additions to the bill, which I will refer to in my testimony. My testimony will demonstrate that some of the policies and practices of the Social Security Administration either restrict or prevent altogether the ability of potential participants to gain access to information and services.

Furthermore, as regards the participation of minority, low income and rural elders, I will show that some of the policies being followed by the SSA are clearly discriminatory in their effect. It has become increasingly apparent since 1985 when the then acting Commissioner on Social Security, Mrs. McSteen, presented testimony before this subcommittee that the primary goal of the Social Security Administration has been cost savings.

As commendable as it is to be cost-efficient in Government and management, there is evidence in McSteen's testimony and in the operational changes which have transpired over the past 10 years, that savings and costs has come about at the expense of those who are potentially eligible for benefits and services.

Indeed over the past few years, there have been widespread closures of field offices and drastic reductions of field staff. I was reading the 1988 annual report of the Social Security Administration to the Congress and it indicated that staff positions within the Social Security Administration have been reduced by 12,000 since 1983.

Nevertheless, Acting Commissioner McSteen gave testimony in April 1985, before the Subcommittee on Social Security, describing SSA's so-called service delivery project, stating it is not a plan to phase out positions or to close field offices.

One has to wonder how drastic would have been the office closures or staff reductions if they had been planned. Perhaps a more appropriate title for the project would have been the service withdrawal project. Mr. Chairman, we believe these actions on the part of SSA are in direct contradiction to the mandate of the administration, the Social Security Administration, to provide services and benefits.

Furthermore, with the withdrawal of SSA from the very people whom it is supposed to serve is in the least unethical and may even be illegal. This is an entitlement for which people have been paying throughout their working lives. Recently when I questioned the Social Security Administration regional director about the closure of field offices and the severe reductions in field staff, he replied simplistically that access to information and services is now being facilitated through the use of an 800 telephone number located at a single understaffed office which is the only one for the entire region in question.

I submit, Mr. Chairman, that the substitution of public contact positions with an 800 number is a practice which effectively discriminates against the low income, rural and minority elders. I mean by this, that many potential beneficiaries in these categories either do not have telephones or they experience significant communication barriers which prevent their being able to access needed information.

For example, the 1980 census of the population found that 75 percent of the homes occupied by Indian elders do not have telephones. Our Indian elderly across the nation speak more than 200 different languages out of more than 500 distinct tribes. You can see the uselessness of an 800 number to most Indian elders. Similar barriers to communication are experienced by Hispanic and Pacific Asian elders as well as many blacks in our inner-city areas.

On the other hand, the 1988 annual report of the SSA to the Congress proudly offers the utilization of telephone service centers as a cost saving measure. The following statements are found on page 2 of the report. "Census figures reveal that 83 percent of the American public has access to a telephone." It goes on to say, "Accordingly, we have increased the number of claims in post eligibility actions that we handle by phone. Nationally, 37 percent of SSA's claims workload is handled by telephone."

Mr. Chairman, it is clear that SSA policies and procedures are being established and carried out without reference to the special needs and conditions faced by the poor and minority elders of our country. In the case of American Indian elders, 61 percent of whom are in poverty, this disregard for special needs is reflected in the low participation rates of Indian elders in the various social security programs.

I will relate to you some of the rates discovered in a 1982 study by the National Indian Council on Aging. Among those eligible for social security benefits, disability benefits are participated by 9 percent of the eligible elders, retirement benefits by 37 percent, old age or 72 plus benefits by 2 percent, survivors benefits, 12 percent; supplemental security income by 45 percent, based on the fact that they exist in or near poverty.

One of the major factors contributing to the low participation levels is the passive attitude of the SSA to their own responsibility to identify and inform potentially eligible individuals. This passivity and lack of outreach effort is both a dereliction and unacceptable practice for any program which is supposed to be regarded as an entitlement.

Worse yet, Mr. Chairman, the practices of the Social Security Administration go beyond passivity to a purposeful effort to exclude rather than include people with respect to benefits and services. In support of this, I call your attention to the 1988 annual report of SSA to the Congress. There are numerous references in the report to efforts on the part of SSA to identify and collect any overpayments of benefits or incorrect payments or to terminate the benefit payments of those who are on disability by having them declared ineligible.

However, you will find in the report only one passing reference to any kind of outreach being conducted, and that dealing only with outreaching to the homeless. This effort to exclude people from benefits is reflected also in the reported rate of denials of SSI claims or supplemental security income.

On page 20 of the report you will find figures which indicate that in 1987, 22.5 percent of the claims of the elderly and 60.5 percent of the claims of the blind or disabled were denied.

Need I remind anyone that the SSI Program is a program which is designed to bring the poor only up to 75 percent of the national poverty figure? That is 75 percent of not enough, Mr. Chairman. In view of the above, we recommend that any and all legislation dealing with the social security be strengthened so as to include the following:

No. 1, clear requirements for outreach and informational efforts to enroll all those who are legitimately eligible for services and benefits, especially targeting minority communities; No. 2, requirements for the reopening of field offices located in or near areas populated largely by minority individuals. This would include the Indian reservations, Hispanic population centers and the various ethnic ghetto areas in our cities.

No. 3, a requirement that SSA initiate recruitment, hiring and training efforts, designed to employ bilingual field intake workers already residing the areas significantly populated by minorities; No. 4, language which clearly requires that telephone service centers nor printed notices not be permitted to be used in any area in lie of personal contact or direct enrollment efforts.

I recognize this represents a significant departure from the current trends, but it is something that the very least that we can do in our society to support those who are eligible for benefits for which they have paid all of their working lives. Acting Commissioner McSteen concluded her testimony in 1985 with the following statement: "The service delivery project represents a continuation of the Social Security Administration's management stewardship, and it in no way threatens the agency's proud tradition of personal service to the public."

With all due respect, Mr. Chairman, I submit if there is a continuation of the above-mentioned practices, which have the effect of depersonalizing the services of the SSA, then their so-called proud tradition will be nothing to be proud of.

In conclusion, let me say I am certain that there is much more that can be done to improve the quality and availability of services to those who are eligible for those benefits, but perhaps these suggestions will suffice for the purpose of this hearing and for the purpose of the pending legislation. It has been said, Mr. Chairman, Mr.

Levin, that in a great society, the way that you measure that society is not by the wealth of its rich, but by what we do about the poverty of our poor.

Mr. Chairman, I submit that minority, low income and rural elders and disabled persons in our country are being excluded from services through a purposeful effort, and I would desire significant changes in the legislation to strengthen their opportunity to participate in the pursuit of happiness in our great country. Thank you.

[The statement of Mr. Cook follows:]

Statement of

Curtis D. Cook

Executive Director

National Indian Council on Aging

Mr. Chairman, and distinguished members of the Subcommittee on Social Security of the House Ways and Means Committee, it is an honor for me to present testimony before you on behalf of the more than 200,000 Indian and Alaskan Native elders in our country. I am Curtis Cook, Executive Director for the National Indian Council on Aging.

It is encouraging to see that the House of Representatives is addressing the needed changes in the Social Security Administration through the introduction of H.R. 5250. We appreciate very much the initiative taken by you, Mr. Chairman, and the members of the Subcommittee on Social Security to address the need for improving the quality of services of the Social Security program and for protecting workers and beneficiaries.

This testimony will demonstrate that some of the policies and practices of the Social Security Administration either restrict or prevent altogether the ability of potential participants to gain access to information and services. Furthermore, as regards the participation of minority, low income, or rural elders, I will show that some of the policies being followed by the Social Security Administration are clearly discriminatory in their effect.

It has become increasingly apparent since 1985, when the then Acting Commissioner of Social Security, Martha McSteen presented testimony before this Subcommittee, that the primary goal of the Social Security Administration has been cost savings. Commendable as it is to be cost-efficient in government and management, there is evidence in Ms. McSteen's testimony and in the significant operational changes which have transpired since then that the savings in costs has been at the expense of those who are potentially eligible for benefits and services. Indeed, over the past few years, there have been widespread closures of field offices, and drastic reductions in field staff. Nevertheless, Acting Commissioner McSteen gave testimony in April, 1985 before the Subcommittee on Social Security describing SSA's so-called "Service Delivery Project" stating, "It is **not** a plan to phase out positions or to close field offices." One has to wonder how drastic would have been the office closures or staff reductions if they had been "planned." Perhaps a more appropriate title for the project would have been the "Service Withdrawal Project."

Mr. Chairman, we believe that these actions on the part of SSA are in direct contradiction to the mandate of the Administration (SSA) to provide services and benefits. Furthermore, the withdrawal of SSA from the very people whom it is supposed to serve is, in the least, unethical; and may even be illegal in that this is an entitlement for which people have been paying throughout their working lives.

Recently, when I questioned a Social Security Administration regional director about the closure of field offices and the severe reductions in field staff, he replied simplistically that access to information and services was now being facilitated through the use of an 800 telephone number, located at a single (understaffed) office which is the only one for the entire region in question. I submit, Mr. Chairman, that the substitution of public contact positions with an 800 number is a practice which effectively discriminates against low income, rural and minority elders. I mean by this that many potential beneficiaries in these categories either do not have telephones, or they experience significant communication barriers which prevent their being able to access needed information. For example, the 1980 census of the population found that 75% of the homes occupied by Indian elders did not have telephones. Add to this the fact that Indian people in this country speak over 200 different languages, out of more than 500 distinct Indian tribes, and you can readily see the uselessness of an 800 number to most Indian elders. Similar barriers to communication are experienced by Hispanic and Pacific Asian elders.

On the other hand, the 1988 Annual Report of the Social Security Administration to the Congress proudly offers the utilization of telephone service centers as a cost-saving measure. The following statements are found on page two (2) of the report: "Census figures reveal that 93 percent of the American public has access to a telephone..." and further, "Accordingly, we have increased the number of claims and post-eligibility actions that we handle by phone. Nationally, 37 percent of SSA's claims workload is handled by telephone." Mr. Chairman, it is clear that SSA policies and procedures are being established and carried out without reference to the special needs and conditions faced by the poor and minority elders of our country. In the case of American Indian elders, 61% of whom exist in poverty, this disregard for special needs is reflected in the low participation rates of Indian elders in the various Social Security programs: a 1982 NICOA study found the participation levels of Indian elders to be as follows:

Disability Benefits	9%
Retirement Benefits	37%
72+ Benefits	2%
Survivors' Benefits	12%
SSI	45%

We believe that one of the major factors contributing to such low participation levels as these is the passive attitude of the Social Security Administration to their own responsibility to identify and inform potentially eligible individuals. This passivity and lack of an outreach effort is both a dereliction and an unacceptable practice for any program which is supposed to be regarded as an "entitlement." Worse yet, Mr. Chairman: the practices of the Social Security Administration go beyond passivity, to a purposeful effort to exclude rather than include people with respect to benefits and services. In support of this statement, I call your attention once again to the 1988 Annual Report of SSA to the Congress.

There are numerous references in the report to efforts on the part of SSA to identify and collect any "overpayments" of benefits, or "incorrect payments," and to terminate the benefit payments of those who are on disability by having them declared ineligible. However, you will find in the report only one passing reference to any kind of outreach effort being conducted, and that dealing only with outreaching to the homeless. This effort to exclude people from benefits is reflected also in the reported rate of denials of SSI, or Supplemental Security Income claims in 1987. On page twenty (20) of the report you will find figures which indicate that in 1987 22.5% of the claims of the elderly and 60.5% of the claims of the blind or disabled for SSI payments were denied. And need I remind anyone that SSI is a program which is designed to bring the poor only up to 75% of the national poverty figure, 75% of not enough...

In view of the above, Mr. Chairman, we recommend that any and all legislation dealing with Social Security be strengthened so as to include the following:

1) clear requirements for outreach and informational efforts to enroll all those who are legitimately eligible for services and benefits -- especially targeting minority communities;
2) requirements for the re-opening of field offices located in or near areas populated largely by minority individuals. This would include the Indian reservations, Hispanic population centers, and the various ethnic ghetto areas in our

country;

3) a requirement that SSA initiate recruitment, hiring and training efforts designed to employ bilingual field intake workers already residing in areas significantly populated by minorities;

4) language which clearly requires that neither telephone service centers nor printed notices be permitted to be used exclusively in any area in lieu of personal contact or direct enrollment efforts.

Acting Commissioner McSteen concluded her testimony in 1985 with the following statement: "The service delivery project represents a continuation of the Social Security Administration's management stewardship, and it in no way threaten's the agency's proud tradition of personal service to the public." With all due respect, Mr. Chairman, I submit that, if there is a continuation of the above-mentioned practices which have the effect of de-personalizing the services of the Social Security Administration, then their so-called "proud tradition" will be nothing to be proud of.

CONCLUSION

I'm certain that there is much more that can be done to improve the quality and availability of services to those who are eligible for Social Security benefits; but, perhaps, these suggestions will suffice for the purposes of this hearing; and I hope they can be included so as to strengthen the language of pending legislation.

We stand ready to assist you by giving whatever added information or clarification, or proposed legislative language you may require. Thank you once again for this opportunity.

Mr. MOODY. Thank you very much, Mr. Cook.

Mr. Hughes, Director of Government Relations for National Committee to Preserve Social Security and Medicare.

STATEMENT OF PETER HUGHES, DIRECTOR OF GOVERNMENT RELATIONS, NATIONAL COMMITTEE TO PRESERVE SOCIAL SECURITY AND MEDICARE

Mr. HUGHES. I am Peter Hughes. I am Director of Government Relations for the National Committee to Preserve Social Security and Medicare. I want to thank, particularly you and Mr. Levin for your interest and your genuine concern over the type of service that the Social Security Administration is providing older Americans under this administration.

We also appreciate the opportunity to be here and testify before this subcommittee. Complaints of poor Social Security Administration service run the gauntlet. From unposted earnings to less than full attention given a claim, from telephone reports never logged in, to clients given inaccurate, misleading or incomplete information.

Given the discomfort and dissatisfaction shown in a recent poll of SSA managers, these come as no surprise. The complaints are directly linked to drastic cutbacks in staff being forced on social security, and to the failure of the current social security management to respond to the problems caused by the lack of proper staffing.

That is why we urge this subcommittee to call a halt to social securities ill-advised and disastrous drive to reduce staff and this is why we feel it is vital to require social security to review its modernization plans and determine whether they mean progress or chaos. The problems we cite here today point up dramatically the need for an independent social security agency, administered by a professional career manager with a bipartisan board setting policy.

An independent board would be able to thwart those politically inspired administrations whose actions are contrary to the express will of this Congress. An independent board would be free to come to Congress to seek help in collecting problems or improving service. That is something we have not seen from the current SSA leadership.

The Social Security Administration has a long and proud tradition of service. It is career employees as you heard this morning and at other hearings throughout this Congress are perhaps the most caring of all Federal staffers, justifiably proud of their agency and the good work it has done for seniors, for the disabled and for their survivors.

That tradition is now in jeopardy. Some of the problems at SSA can be minimized by legislation presently before the subcommittee. Notably H.R. 5250 introduced by Congressman Levin, in this legislation, Congressman Levin makes an effort to provide workers the opportunity to correct erroneous or incomplete records. That is if they have been smart enough or prudent enough to retain their tax returns and there were two forms.

His bill removes the statute of limitations to allow retiring workers to seek corrective action whenever they realize their records are in error. This is a major provision which we support. The correct must not wait 10 or 20 or more years until those affected workers apply for benefits. There can be no satisfactory substitute for the timely maintenance of accurate records.

The longer records go uncorrected, the harder it becomes to identify inaccuracies and to compile the evidence necessary to get those inaccuracies corrected. That is why the failure to properly credit $58.8 billion in wages to individual records is extremely unsettling, unsettling enough to us so that our association, along with recommended other remedies has asked the U.S. District Court to order social security and IRS to fulfill their legal responsibilities to resolve the millions of backlogged cases and make sure there are no further occurrences.

Another step in making sure that every worker or recent retiree not only learns of the earnings posting controversy, but is advised to keep all necessary records, income tax returns and W-2 forms. That could have been done in SSA's recent publicity campaign, but it wasn't.

While workers were urged to seek their benefit and earnings statement, they were not told just how critical getting that form and criticizing it might be. Senator Moynihan would have social security sending out periodic earnings and benefit statements so workers can see if there are any discrepancies which need correction.

We feel this is an excellent idea. Social Security Administration says it is going to make it part of the agency's year 2000 plan. This may be too late for today's older workers. This subcommittee also has before it legislation to provide a little humanity in the Social Security Administration's benefit overpayment collections procedure.

We have no quarrel with SSA's responsibility to recover overpayments. That must be done. But the agency doesn't have to be quite so heavyhanded in its approach. In our statement for the record we list several instances where national committee members and others were left destitute when their monthly social security checks were confiscated to pay back overpayment which they received through no fault of their own.

The national committee also considers it imperative that the SSA stop its increased emphasis on serving social security inquiries and claims by telephone. I might add parenthetically when we took the break for lunch I went over the Democratic Club and ran into a friend of mine who is a retired lobbiest and he said that number works its terrific. He said I called up and they answered right away and within three days I had the form and I filled it out and within 10 days I had an answer back.

I said, "You called the 800 number?" He said, "I called the number they use for this." I said, "You didn't happen to get it from your Congresswoman, did you?" He said, "As a matter of fact, she did give me that number." I think someone mentioned this morning if you have the number the Congressman's office has, it works. If you have to rely on the 800 number, in many instances it does not work.

Many SSA cases are too complex to be handled by phone. Disability cases, for example, require an understanding of an individual claimant's condition which can only be obtained through a face-to-face interview. Does the individual appear to be in pain, have difficulty moving? Is the individual exceptionally nervous or agitated? Does he or she understand the question? Is he or she concentrating his or her answers on one major disability and ignoring other obvious impairments?

You don't get answers to questions like this over the telephone. You have to see and deal with the person in person. Another weakness of the telephone servicing at SSA is the agency's failure to log all such telephone calls and provide callers with proof of their conversations, and as we heard this morning, to keep accurate and permanent records of all such contacts.

In our written testimony we cite cases of several national committee members whose reliance on information obtained over the phone cost them dearly. If we must have telephone servicing, let's at least provide adequate staffing, adequate training, realistic workloads and realistic performance standards and let's stop measuring productivity by a stop watch and quotas.

Mr. Chairman, the lives of many persons, not just retired Americans, are being adversely affected every day by deficiencies in the extremely vital services provided by the Social Security Administration.

We can't allow these deficiencies to continue. We must stop things which destroy efficiency and morale. We need top management dedicated to restoring the agency's traditions of high-level competency and service.

Mr. Chairman, that concludes my oral statement. I request that our full statement be included in the record.

[The statement of Mr. Hughes follows:]

**NATIONAL COMMITTEE TO PRESERVE
SOCIAL SECURITY AND MEDICARE**

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STATEMENT OF
PETER HUGHES
REPRESENTING THE

NATIONAL COMMITTEE TO PRESERVE SOCIAL SECURITY AND MEDICARE

PRESENTED TO THE

SUBCOMMITTEE ON SOCIAL SECURITY
COMMITTEE ON WAYS AND MEANS
U. S. HOUSE OF REPRESENTATIVES

REGARDING

THE QUALITY OF SOCIAL SECURITY SERVICES

September 22, 1988

I am Peter Hughes, Director of Government Relations for the National Committee to Preserve Social Security and Medicare. On behalf of the five million members and supporters of our organization, I want to thank you for this opportunity to address the problems our members have experienced in the delivery of services by the Social Security Administration (SSA).

The National Committee has received many reports of poor service, allegations of rudeness, improper attention to a claim, unrecorded telephone reports, and inaccurate, misleading or incomplete information being provided. That is in concert with a recent SSA survey of its managers which reported that 67 percent of its managers are not "comfortable with the way SSA is managing the downsizing process" and 55 percent indicate their employees are not satisfied with their jobs. We believe these problems are primarily due to the drastic cutbacks in staff and the failure of SSA management to respond to the problems.

Some of these problems can be minimized by legislation such as that proposed by Congressman Levin. **The National Committee urges the Subcommittee to act to help resolve the problems of correcting earnings records, overzealous overpayment collection methods and the lack of telephone service accountability. The National Committee also urges the Subcommittee to stop the staff cuts and mandate that SSA review its progress on modernization to determine if the efficiencies have occurred as planned.**

These problems also point up the need for an independent Social Security agency governed by a bipartisan board. An independent board would prevent politically-inspired administrative actions that are contrary to the will of Congress, and would demand accountability from the Commissioner. An independent board would also have the authority to propose legislation to correct these problems. Such proposals have not been forthcoming from this Administration and it has been up to the initiative of this Subcommittee and other Subcommittees to prod SSA to resolve these problems.

Correction of Records

A principal factor in the earnings crediting controversy is the failure of SSA to fulfill its responsibility for the maintenance of accurate records. SSA has recently tried to shift this responsibility to individual wage earners by claiming that the burden is on them to contact SSA every three years to be sure their records are accurate. Mr. Chairman, this is a classic "blame the victim" defense. Although wage earners can assist the agency by checking their records, at the bottom, it is a governmental responsibility.

In H.R. 5250, Congressman Levin makes a great effort to provide workers the opportunity to correct erroneous or incomplete records. However, his legislation does not fully meet the need for prompt action on those problems which resulted from the 1978 change in employer-reporting requirements. One good step the Levin bill takes is removing the statute of limitations to allow retiring workers to seek corrective action whenever they realize their records are in error. But correction must not wait 10, 20, or more years until those affected workers apply for benefits.

When individuals already retired question their benefits and request a statement of the earnings on which those benefits are based, they must not be confronted with a refusal to take that request seriously. Yet that happened to Rose Weaver of Teaneck, New Jersey, last winter.

In a letter to the National Committee, Mrs. Weaver writes:

> "I requested that my earnings be reviewed and an explanation showing the breakdown be mailed to me. I was told it would take several weeks. That's fair enough. Not hearing from the S/S office, I again called. Now I am told this is not a priority case, therefore it can only be handled when a clerk has time. This could take forever. I'm not even sure if the request has been filed."

Getting the full benefits to which an individual is entitled may not be a priority to SSA management, but it is to the millions upon millions of seniors who rely on Social Security.

Therefore, there is no satisfactory substitute for the timely maintenance of accurate records. The longer records go uncorrected, the harder it is to identify inaccuracies and compile the evidence necessary to get those records corrected.

Maintenance of accurate records – which includes assuring that earnings information provided SSA agrees with tax returns filed with the Internal Revenue Service – is the responsibility of those agencies.

That's why the failure to properly credit wages to an individual's records is extremely unsettling.

The National Committee considers this failure such a serious threat that, among other remedies, we have asked the U. S. District Court in Washington to order the agencies to fulfill their responsibility and fully resolve the millions of backlogged cases and prevent such an occurrence in the future.

Senator Daniel Moynihan asks that SSA be required to periodically send out earnings and benefit statements to all workers. SSA responded it would do so as part of its "Year 2000" plan. In the meantime, SSA unveiled a campaign to send earnings and benefits statements to any worker requesting such statements. Unfortunately, in announcing the new service, SSA neglected to warn workers about the uncredited earnings problem and to explain the importance of checking their records.

SSA has an obligation to immediately conduct a public education campaign to alert all workers of the possibility of uncredited earnings. Workers must be clearly advised of the need to maintain their Federal income tax returns, W2s and, for the self employed, cancelled checks, not just for past years, but for future years as well. And there should be no argument over a time limit for corrections. In addition, the Internal Revenue Service's cooperation is essential. For example its enforcement authority should be used to require employers whose earnings reports are missing or discrepant to maintain payroll records until those discrepancies are resolved.

Recovery of Overpayments

Congressman Levin's bill also addresses SSA's heavy-handed methods of collecting overpaid benefits no matter how the overpayment occurred. This problem and other overpayment problems are increasingly evident in mail received from National Committee members throughout the country.

We do not quarrel with SSA's responsibility to recover overpayments, even those which have been long delayed. However, we urge this Subcommittee to review the manner in which that responsibility is being carried out. Further, we believe this Subcommittee should review the standards by which hardship is judged in cases where the beneficiary is without fault.

Members of Congress owe it to themselves and their constituents to review the entire collection process. A good starting point would be the standard overpayment letter which terrifies the average beneficiary:

> "Our records show you have been overpaid _____. You should refund this overpayment in 30 days. If we do not receive your check within 30 days, we plan to withhold your full benefit beginning with the payment you would normally receive about ______. We will continue to withhold your benefit until the overpayment has been fully recovered."

The overpayment letter does have an outline of appeal rights and, in the final paragraph, there is the suggestion the recipient contact the Social Security office if withholding total benefits would cause hardship. But not every beneficiary understands how to protect himself or herself, or that a beneficiary can request a waiver when he or she is without resources and is totally without fault.

Mrs. Elizabeth Simpson of Philadelphia writes:

> "I didn't receive my SS check and from what they are saying, I'll not receive one until Sept. which will be only $222. They say they overpaid me. That is my money. I worked hard for it. And if they did overpay me, why would they take my whole check? I don't know what I am going to do until Sept. I do have a roof over my head and that is about all. I am 71 years old. I am a diabetic on a special diet. . . . Please help me as I don't know what to do."

We concur with Congressman Levin's recommendation that any determination of "fault" in overpayment and other Social Security issues be made with due consideration to physical, mental, educational and linguistic limitations.

Congressman Peter DeFazio has brought to our attention a classic example of long delayed collection action. His constituent, who left the work force four years ago at age 67, had been overpaid mother's benefits in 1969 and 1970 because, in those years, she had earned more than $1,680. She contends she was granted a waiver of repayment, but cannot produce it because she disposed of all her old records when she moved into her retirement residence. The only record SSA has on file, however, is a waiver relieving her son from repaying the overpayment made to his mother.

So 17 years after the overpayment occurred, and more than three years after she retired, the mother received the standard overpayment notice demanding $1,202.80 within 30 days. Had she been notified of the indebtedness during the intervening years or even when she first applied for Social Security retirement benefits, she might have arranged to stay in the work force long enough to repay the debt. In this case, Congressman DeFazio intervened and SSA finally conceded that earlier records could have been lost and decided not to pursue collection of the indebtedness. But she is not alone.

That's why we heartily concur with Congressman DeFazio's H.R. 4390 to preclude collection action if SSA is aware of an indebtedness, but fails to notify an affected beneficiary within 24 months after the individual comes on the benefit rolls. In fact, we would broaden his bill to protect individuals already on the rolls when overpayment notices come out of the blue, years after the fact.

Mr. James Barnett, a National Committee member from Tygh Valley, Oregon, was divorced in 1966. Shortly thereafter, when he became eligible for Social Security disability benefits, his former wife applied for child benefits for their son. Adult disabled child benefits continued, however, after the young man reached age 18. The young man married in 1972, but Social Security was not notified until 1976. So, Mr. Barnett's former wife received $6,084.22 in adult disabled child benefits to which their son was no longer entitled.

Last October, 11 years after an overpayment was first realized by SSA, Mr. Barnett received the standard threatening letter requesting a check for $6,084.22 within 30 days. Particulars in the initial notice were totally wrong and a subsequent, corrected notice had to be issued, but error-laden notices are a separate, and not uncommon, problem.

Mr. Barnett didn't receive the overpaid benefits. He is without fault in creating the overpayment. He didn't even know benefits were paid after his son reached 18. He still doesn't know if the money was misappropriated or actually spent on his son.

Where has this debt been for the last 12 years? Was any effort made to collect from the recipient? Why is the overpayment not being withheld from his former wife's Social Security benefits?

According to SSA, he is not entitled to answers. His former wife and son's privacy rights preclude his receiving any information other than that the money was paid yet he is responsible for repayment.

Mr. Ernest Silvey of Union, Oregon, another National Committee member, is another victim of overzealous collection action. He, too, was totally without fault when his overpayment occurred because Worker's Compensation benefits were not fully offset. He was denied waiver of repayment and, in a 1981 Administrative Law Judge decision, was told he must repay $8,647.50. That amount was ordered withheld from his disability benefits. Later SSA advised Mr. Silvey he was also liable for repayment of $5,633.90 in benefits overpaid to his family. Again he appealed. Administrative Law Judge Dale Crabtree, in January 1987, ruled that:

> "Both Mr. Silvey and the Social Security Administration should be bound by the decision of December 1, 1981 and the matter should be closed." (i.e. he owed $8,647.50 and nothing more.)

But the matter is still not closed. Completely ignoring Judge Crabtree's decision, SSA continues to recover $116 a month from Mr. Silvey's benefits and will do so through May 1989 until it has recovered the original overpayment and the one the judge said they couldn't collect. Mr. Silvey's children are grown. His wife is deceased. His only income is his monthly Social Security benefits.

Telephone Accountability

These complex overpayment cases occur even though beneficiaries can call or visit a local Social Security office and speak directly to a claims representative. Therefore the opportunity for error and misunderstanding is multiplied when complex Social Security questions are posed to nameless, faceless telephone service representatives.

The National Committee has serious concerns about the increased emphasis on telephone servicing. Such servicing is inappropriate in many instances. It is singularly unsuitable for filing applications for disability benefits. How can a disabled person be expected to adequately describe his or her impairments and previous work history over the telephone? Equally important, how can a telephone service representative, taking a disability claim, perform the all-important function of observing the claimant? A trained claims representative uses eyes as well as ears when interviewing a disability applicant. Many questions are dictated solely by such observation. Is the claimant concentrating his response on one major disability and not mentioning other obvious impairments? Does the claimant appear to be in great pain or have great difficulty in moving? Is the claimant exceptionally nervous or agitated? Does he or she understand the questions?

Even in cases less critical than disability, face-to-face discussion is important. In virtually all claims applications, too much information must be exchanged. The claims representative may need to counsel, lead or probe to complete the claim. Substantial documentation must be requested and claimants must be offered help to locate birth, marriage, divorce and death records. They must be directed to alternative proofs such as Census or school records when no other evidence is available. The need for substantial documentation is particularly pronounced in cases of multiple marriages, prior common-law relationships, or, in survivor cases, where there is more than one survivor family eligible for benefits. Telephone servicing is also inappropriate for the hearing impaired, those to whom English is not a native language, and individuals with poor verbal communication skills or impaired speech.

For those for whom telephone servicing is adequate or even preferable, there must be telephone accountability. We agree with Congressman Levin that a demonstration project is urgently needed to evaluate the feasibility of sending callers a receipt with information sufficient to protect the caller's rights and responsibilities relating to Social Security benefits.

Such accountability would have protected Mrs. Stella Lukas, a National Committee member from Philadelphia, Pennsylvania, who was not only required to repay excess benefits, but was assessed a penalty for an alleged failure to report her earnings.

> "I received a letter from Social Security that an overpayment of my benefits will be withheld until everything is taken what is owed them. I understand this, but in the letter it also states due to late filing, a penalty of $1,295 will be held back. This is untrue. I did call. . . A man answered and I told him I am reporting my earnings for 1985. He took all the information and now they can't find that a report was made. I don't know how to fight this. . . The mistakes are made in the Office of Social Security, but I am being punished for their mistakes."

After a bad experience with telephone service, Mrs. S. E. Parnell of Renton, Washington, wrote:

> "Will you please advise people not to report anything to Social Security over the phone. Put it in writing. Mine is not the only case of its type here at this time and it is just ridiculous.
>
> "On January 22, 1988, my husband died. The following week I called Social Security to report his death. The person who took the information from me wrote it down wrong and Social Security told the Treasury Department Bob had died a year earlier. Social Security had a copy of the death certificate, but didn't even look at it. The Treasury Department, without checking, began to request repayment of Bob's benefits from my bank, not for one month, but for 13 months These requests for payment have continued even

> though Social Security notified the Treasury they were in error. . . (The Treasury Department has) also accused me of forgery because Bob had signed all his Social Security checks."

National Committee member Paul Kibby of Seattle, Washington, didn't file for benefits until he was 69 years of age and unfortunately provided us another excellent example of the confusion and conflict which can result from telephone servicing:

> "I applied March 1, 1987, for S.S. I received checks for January and February. I called SS to advise them I should send those checks back as I should not receive money prior to signing up. I was advised by the phone voice not to return the $1,600 as that would "screw up the system." This happened another three phone calls to the "voice" -- like talking to God. -- I made over the magic figure of $8,160 my first year and am planning to return one-half of that. Now the Soc. Sec. wants one half of my earnings for Jan. and Feb. which would amount to $3,500.
>
> "The voice on the phone is a joke. There is no record, nor is there anyway to verify who tells what to whom. It is a neat way to give out poor advice with no place to pin responsibility! Now I must appeal on the hardship basis, and you know that course. So I pay back nearly $5,000 in this fiasco."

For those functions for which telephone servicing is appropriate, Congressman Levin's proposal offers important and necessary protections. As a bare minimum, SSA must provide a receipt and keep a record of telephone transactions.

Two widows -- Mrs. Lillian Oldag of East Bernard, Texas, and Mrs. Lorene B. Graves of Reidsville, North Carolina -- had identical problems with telephone answers to their inquiries. Each one, shortly before her 60th birthday, telephoned Social Security to inquire about filing for widow benefits. In repeated phone calls, each was told they would be eligible at age 62 instead of the correct answer of widow eligibility at age 60. Each unsuccessfully appealed the denial of retroactive benefits based on misinformation received from Social Security representatives.

Every incoming mail delivery to the National Committee brings new member reports of inability to reach telephone service centers. When they are reached, callers often receive incomplete, inaccurate or misleading responses. Because telephone service representatives are pressured to handle an ever increasing number of inquiries, they often improperly record information, fail to ask enough questions to fully understand the problem or don't take the time to make sure that the caller fully understands the information provided.

The more reliance SSA places on telephone servicing, the less beneficiaries are going to be aware of their Social Security rights and responsibilities.

The National Committee is convinced many of these problems would be eliminated if Social Security offices and telephone service centers had adequate staffing, adequate training, realistic work loads and realistic performance standards. Supervisors cannot stand, stop watch in hand, behind representatives expect no errors and omissions.

We are firmly convinced that rights of callers will remain at risk until SSA accepts complete responsibility for the information provided to callers provides a written record of calls. For this reason, the National Committee urges approval of Congressman Levin's proposal to require one-year telephone accountability demonstration project. We are particularly pleased that his legislation mandates a prompt and thorough final report on the project including an assessment of the feasibility of implementing accountability procedures on a national basis.

Conclusion

Mr. Chairman, the cases cited in my statement as well as many other allegations of service deficiencies are available for your review if you or your staff should so desire. Similar examples have undoubtedly come to the attention of your own caseworkers or those of other members of this Subcommittee. Lives are being adversely affected every day. We urge you to look behind these problems for their cause. If staffing has been cut so severely that personnel in Social Security offices are stretched to the breaking point, those cuts must be reversed. If morale problems, staff turnover and an inability to continuously train new workers are feeding on each other, that circle must be broken.

Social Security offices have long had a reputation for professionalism, organizational pride, and a commitment to service. Letters from our members indicate that reputation is at risk.

Thank you.

Mr. Moody. It certainly will. Thank you very much.

All right. Mr. Esper, you offer an interesting proposal to allow SSA staff attorneys to render disability determinations in cases where the existence of disability is "obvious."

Mr. Esper. Yes, sir.

Mr. Moody. Obvious in whose eyes? Who would be the judge as to whether it was obvious? What is obvious to one person isn't so obvious to another. Does the staff attorney do that alone? What checks would there be on the accuracy of the staff attorney's decision?

Mr. Esper. The check on the staff attorney—well, as far as what is obvious, I gave some examples from my practical experience as to what would be obvious allowance. If the documentary evidence establishes that the medical condition meets or equals the Social Security medical listing, or if the documentary evidence establishes that the claimant meets one of the so-called grid rules on the impairment, the check would be performed either of several ways.

Under the general supervision of an ALJ or ultimately the Social Security Appeals Council would be looking after this as they do after the decisions of ALJ. What I contemplate, there would be some review——

Mr. Moody. An ALJ routinely reads these decisions. How would they oversee them if no one protested or complained or would they?

Mr. Esper. I only contemplated at best a sample review. If you are going to have to have the ALJ look at every decision a staff attorney adjudicates, my proposal would not be cost efficient. So I am saying, look, under certain circumstances, which I have set out here and perhaps in other circumstances that the agency would gain by experience, if it is going to be an obvious allowance based on new documentary evidence, go ahead and adjudicate it.

I mean, you would be doing the same thing they do at the disability and determination service, you know.

Mr. Moody. Have you presented this to SSA and got any reaction from them?

Mr. Esper. We presented a proposal or floated an idea more accurately with regards to staff attorneys helping to adjudicate medicare claims earlier this year. It is now still under study by SSA. I don't know what they are currently doing with it. I suspect it is because they don't know what they are going to do with the Medicare Appeal Program in general.

The timing of your hearings caught us by surprise a bit. We were in the process of formulating this proposal and we decided since you are holding the hearings and you offered to listen to new ideas, we would float it by you first with a feeling that if there is going to be considerable congressional opposition to staff attorney's helping adjudicate hearing appeal cases, the idea is dead, so we might as well find out right away.

On the other hand, if members think the idea has potential, your displayed interest would help push it along. I did provide the administration a copy of my statement.

Mr. Moody. You might let us know how they react if indeed they do. Mr. Cook, your testimony recommends that SSA be able to engage in outreach in specific communities. What actions did the agency take to reach eligible individuals who apparently are being missed, according to your testimony.

Can you give us a little more specifics? Do you have any cost estimates on that?

Mr. COOK. No, sir. That would be an interesting thing to have. Perhaps we can generate some figures, but I believe that one of the more significant strategies that could be employed would be field visits by a regionalized Social Security Office, and by a person who is bilingual. An option or alternative to that is to provide contract funds from the Social Security Administration to local service providers within a community, whose time might be well-spent in informing and enrolling people who are legitimately eligible for services within the local communities, such as in the Indian community.

There are programs there which are outreach-oriented kinds of programs, the community health representatives and various social work programs in the Indian community. If those folks could assist with providing information, the cost could be very minimal. We believe that more than that is going to be needed in terms of providing the ongoing kinds of information that are needed by the minority elderly, particularly American Indian elderly, whose communication problems are significant in terms of being able to understand the white man's ways, being able to understand the language of the educated social security intake worker, being able to understand this whole process of paperwork and all this trouble they have to go to just to get what they have paid for all of their working lives.

Mr. HUGHES. Mr. Chairman, if I might add something.

Mr. MOODY. Mr. Hughes.

Mr. HUGHES. I have been acquainted for a number of years with the tax aid program for the elderly. IRS feels it is such a good program that they provide money to help train volunteers and to pay out of pocket expenses to volunteers who assist seniors in filing their tax returns.

This saves IRS a great deal of money in terms of paperwork, returned checks, inaccurately filed tax returns.

Mr. MOODY. So it is cost-effective.

Mr. HUGHES. Very, and I would suggest that the Social Security Administration might look into the same kind of program, employing seniors to go out into the community and help other seniors in learning what their benefits are and how to apply for them, how to deal with a disability claim, with an appeal, how to deal with a medicare claim, whether or not they qualify for medicaid, and I think this would be very cost-effective and could be a way to deal with the problem that Mr. Cook is talking about.

Mr. MOODY. Mr. Cook, this is an ignorant question on my part. I should know, but don't. Are SSA forms and communications to beneficiaries in more languages than English?

For example, in Florida, are they in Spanish?

Mr. COOK. I believe they are available in Spanish and there are Spanish intake or outreach field workers in some of those heavily populated areas where the Hispanic community exists. However, as I mentioned in my testimony, there are over 200 languages spoken by American Indian elderly people. And to——

Mr. MOODY. Are there any SSA pamphlets on any of those languages right now?

Mr. COOK. No, sir.

Mr. MOODY. None?

Mr. COOK. None as far as I know. I am very familiar with the largest of the Indian tribes, the Navajo tribe in Arizona and New Mexico and Utah, and there are none of those kinds of forms, translated forms, available to them.

Mr. MOODY. Is there an attempt to have bilingual intake workers in areas where high Indian concentrations exist?

Mr. COOK. Not at the present time. That is one of my recommendations.

Mr. MOODY. OK. Mr. Hughes, you heard the testimony this morning and I know your committee is concerned with a wide range of problems, not that these other gentleman aren't, but they have specific points. You heard the entire range of questions and you heard the administration present its point of view.

Do you have some comments on either the administration's testimony or that of the lady from legal assistance from North Dakota, Ms. Fehner from the Government employees, the lady speaking for Ms. Jones of Dallas, or Mr. Flemming's testimony or anything else that might occur to you?

There was a wide range of criticism in some respects.

Mr. HUGHES. Yes. I think we most definitely come down on the side of the witnesses, other than the witnesses representing the Social Security Administration.

Mr. MOODY. Ms. Sweeney had some very interesting points as did the others.

Mr. HUGHES. Without recalling any specific comments that they made, the general tenor was the Social Security Administration has enjoyed over the years, I think we would all agree, a reputation of a Government agency that really cares. One of the ladies this morning said when she started there, they were taught to treat every client as you would your mother.

I think that is the reputation that the agency has had over the years. I think that hearings that Congressman Weiss held last year, when some brave souls from the Social Security Administration got up and talked about what is going on, show that this kind of morale, this kind of dedication of service has been eroded under the administration of the current commissioner.

I think everybody is all in favor of saving money and dealing with the deficit. It is on everybody's mind, not only Members of Congress but seniors probably as much if not more than the rest of the population. They are not used to deficit spending and they don't like it. But when "efficiency" which has not proved to be efficient in our view, when "cost containment and cost savings" lead to poor service and denying legitimate benefits to individuals who are entitled to it, it just does not fit with our view of what the Social Security Administration is all about.

I think that you heard it many times this morning. I know that Congressman Weiss heard it in his hearing. I think that you are hearing it from your constituents and certainly hearing it from our members, and district office closings, relying on telephone service that you either can't get through or when you get through, you are not sure whether or not anybody got the message and I think there were comments this morning about those.

Some of those are then referred to local offices and it might be 3 to 6 months before anybody ever acts on those telephone requests, if ever, because they are not included in the "quotas" for evaluating whether or not that individual or that——

Mr. MOODY. Not part of the production quota. Do you subscribe to that analysis? Do you think that was accurate?

Mr. HUGHES. Yes. I don't think the SSA had become the great agency it was based on piece work type of employment. I don't think anybody who was employed there was hired on that basis. I, once again, think there has been a great emphasis by this administration on piece work and meeting quotas.

I am delighted that this committee is now looking at that and is bringing this to light. We feel it is a real problem. The other thing I would like to comment on briefly is that the whole question of unposted earnings, almost $60 billion in unposted earnings. That is money that is being collected by employers, money that has been paid to the SSA, that is money that should have gone to someone's credit and their retirement and there is absolutely no excuse.

This has been going on for 10 years. I know Congress has looked at it and Congress has asked the administration to do something about it. There have been a lot of promises. There has been a memo of understanding between IRS and SSA.

This is not the first such memo. Nothing has been done to really correct this, and I am sure that you are aware that the Social Security Administration, Commissioner Hardy, testified I think not too long ago, that in certain cases, if it is less than a certain dollar amount, they are not worth dealing with.

Well, $8 a month may not be worth much to you or me, but it is worth a lot to many people who receive Social Security. I think that the other way in which they explain that they dealt with many of these cases, they made one or two telephone calls to employers to verify earnings records, and if they do not get a response, the case is marked closed.

Mr. MOODY. They don't go beyond a phone call. They don't send an official registered letter.

Mr. HUGHES. They might send an official letter, but if they don't get a response, they mark it closed or if the employer says we don't have those records because we only keep them 4 years, they mark it closed. The burden is then on the individual.

The burden should not be on the individual.

Mr. MOODY. You recommend should the law be changed to require longer than 4-year preservation of records.

Mr. HUGHES. I would recommend that.

Mr. MOODY. That is not in the bill we are looking at but you would recommend it.

Mr. HUGHES. Yes.

Mr. MOODY. Do you quarrel with any parts of the bill and you have heard the eight major features of it today, overpayment——

Mr. HUGHES. The only thing I think we would ask is that, and I know we mentioned it in our statement, but I am not sure Mr. Levin, a 1-year study is needed. I would like to see that shortened a little bit.

Mr. **Moody**. The teleservice?

Mr. **Hughes**. As to whether or not the teleservice is actually working. I think a lot of what we heard today shows that it is really not working.

Mr. **Levin**. Let me suggest if I might——

Mr. **Moody**. Just a second.

You have heard us describe the other seven pieces. The overpayment problem, teleservice, the difficulties in verifying earnings, that problem. The good faith standard, outreach to the homeless and one could add minority communities and notices regarding address and telephone number of a contract person would be required on all agency notices, the simple clear language, the representation of claimants, having that cleared up.

Finally, reapplication versus reapply, that issue.

Mr. **Hughes**. We support the bill, Mr. Chairman.

Mr. **Moody**. All eight pieces.

Mr. **Hughes**. We commend Mr. Levin for it.

Mr. **Levin**. To wind up, the more suggestions you have, the better. So please provide them as we try to perfect this bill from every source, and any specifics, we would much appreciate them.

Let me just close on the testimony of Mr. Esper and by the way, the specific cases, Mr. Hughes, in your testimony, are very helpful. The more that we can receive, the better.

Mr. **Hughes**. We would be happy to provide you with as many letters as you would like, as long as we have the permission of our member.

Mr. **Levin**. Give the staff details on both majority and minority side. Just, if I might, on the question of staff attorneys making these determinations, if you have any further argument, let us hear it, to have someone other than an ALJ decide whether there is significant new evidence, I would like you to write us further on that and tell us if there is any instance where that decision is made with finality by someone other than an ALJ.

I can't think of one. Significant new evidence, as you know, is one that can be argued on both sides. Normally, in quotes "a judge decides that." So let us have any further argumentation you have, if you would.

Mr. **Moody**. Mr. Esper, your point was that you would speed this up and the delays would be reduced, is that—that was an essential point, wasn't it?

Mr. **Esper**. Yes, sir.

Essentially, we propose when new evidence comes in such as the documentary evidence showing this is obviously something that is going to be allowed, we should adjudicate it and send the cases that are more questionable to the ALJ for a full ALJ hearing.

Mr. **Moody**. Let me finally ask, was the administration representative here for the second part after lunch?

We will send a letter attaching some of the specific testimony for their reaction. Thank you all for being here.

[Whereupon, at 2:20 p.m., the hearing was adjourned.]

[The following was subsequently received:]

NTEU
The National Treasury Employees Union

October 11, 1988

Hon. Sander M. Levin
House of Representatives
Washington, D.C. 20515

Dear Mr. Levin:

This letter is in response to one of your questions asked of me at the Ways & Means Social Security Subcommittee hearing of September 22, 1988. You requested that I answer you in writing.

As you know, I am proposing that staff-attorneys at SSA's Office of Hearings and Appeals be allowed to adjudicate some hearing appeal cases. These hearing appeal cases are those which, as a result of new evidence, are obvious allowances. As part of my proposal, I indicated that cases which have "no significant new evidence" should not be adjudicated by staff-attorneys. You asked how anyone other than a judge could determine whether a case had significant new evidence.

By way of background, the "significant new evidence" requirement was not included in my proposal because of any legal requirement. I included this requirement because, in my judgment, to reverse reconsideration denials on the basis of cases being "obvious allowances", without significant new evidence, would tend to foster intra-agency ill will between SSA's office of Hearings and Appeals and those SSA components which render reconsideration determinations.

At this point, I wish to say that if the subcommittee comes to feel that staff-attorneys should adjudicate cases which are obvious allowances but which do not have significant new evidence, I would defer to the subcommittee's judgment.

Assuming that you wish staff-attorneys to adjudicate only those cases with significant new evidence, who would be able to determine that a case has significant new evidence and what legal standard should be used? Staff-attorneys should be presumed to have the ability and training necessary to render such a determination, because of their legal education and experience and by the fact that they have passed a bar examination. As far as what legal standard should be used to determine when significant new evidence is present, I suggest

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utilizing a "new and material evidence" standard, of the type which is currently used in sections 404.989(a)(1) and 416.1489(a)(1) of Social Security Regulations Nos. 4 and 16 (20 CFR 404.989(a)(1) and 416.1489(a)(1). I think there is merit in using a standard which is currently utilized in SSA regulation, rather than creating an entirely new one.

I believe that my reply answers your question. However, please allow me to comment on one question asked by Congressman Moody. Congressman Moody asked how one would know if a case is an "obvious allowance". There are existing SSA regulatory guidelines which could provide some direction. Sections 404.948(c)(1) and 416.1448(c)(1) of Social Security Regulations Nos. 4 and 16 (20 CFR 404.948(c)(1) and 416.948(c)(1)) permit a hearing appeal case to be remanded, without a hearing decision, for a revised determination, if there is reason to believe that a revised determination would be wholly favorable to the claimant. I suggest borrowing from these regulatory guidelines. A staff-attorney should be able to adjudicate a hearing appeal case in those situations where it could be expected that a remand of the case would result in a revised determination which would be wholly favorable to the claimant. In such situations, why have the claimant's case further delayed by having an ALJ hearing or a revised reconsideration determination?

Allow me to conclude that I would be very pleased if you and Congressman Moody included our proposal in your Social Security Beneficiary Protection Act bill when you re-introduce it next year.

Sincerely,

James A. Esper

James A. Esper
Chapter President
Chapter 224, NTEU

SP:ca:3187L

APPENDIX

LETTERS RECEIVED BY CONGRESSMAN LEVIN ON THE QUALITY OF SSA SERVICES

September 30, 1988
Box 165
Vernon, N. Y. 13476
(315) 829-3421

Subcommittee on Social Services
House of Representatives
Washington, D. C. 20510

Subject: Record of Poor Performance of SS Administration Employees In 11 Years of Handling My Claim, SS# 096-12-4089, Including Documented Proof

Honorable Sirs:

I would like to have the following statement and its related documentary proof included in the record of the Sept. 22, 1988 Hearing on the quality of service provided by the Social Service Administration.

No mere words can describe the bitter frustration, disappointment, pain and financial distress I have suffered due to the callousness, inefficiency, injustice and tyranny of SSA employees dealing with my claim in the past 11 years.

It has taken me much time and painstaking effort to research my 3½ inch high stack of SS records from 1977 until the present and sort out and annotate the more pertinent documents reflecting the many errors and injustice created by SS employees handling my SS Disability Claim since 11/14/77. At that time I was 55 years old. I am now 66 years old. In that 11 years, the harassment, intimidation and inefficiency of SS employees has never let up.

I do hope the great amount of evidence and detail I have furnished will not cause the reviewer to skip lightly over it when reviewing it. It would mean so much if somehow all the ugly facts of my case were brought before your committe in hopes you will finally take appropriate action to eliminate the great injustice suffered by victims like myself from SS employees like Mr. J. McGowan, Module 31 of the Northeastern Service Center in Flushing, N. Y., who has apparently been handling (or mishandling) my case for many years, plus Administrative Law Judges and Appeals Council members, who are not seeking to make a just decision, but only to protect SS administration errors, denying fair hearings to those who so badly need their help.(Please see inclosed newsclippings relating many instances of their unjust and tyrannical actions.)

I have tried to set up the documents in separate groups relating to specific problem areas so they can be reviewed more easily. Please notice the inadequate replies to my desperate appeal for assistance from SS Commissioners John Svahn (7/18/830), Martha McSteen (12/30/83 & 1/24/84) and my replies to her, and Dorcas Hardy (8/4/87 & 8/6/87). Mrs. Hardy did bring about the end of the SS persecution of me to repay my son, Neil's, overpayment after she had received a request from President Ronald Reagan, for which I was very grateful. However, in August, 1988, I was stunned to receive another SS Ntoice again demanding payment of that claim! The matter was again just recently resolved through the local Utica SS office. I again reported this to Mrs. Hardy, and a M. Carozza, Deputy Commissioner for Policy & External Affairs, responded, merely referring my problem back to the N. Y. Regional office, where the problem originated.

My monthly SS income began in 1979 at $206.70/month and is now $303.00/month, not including Medicare payments. This is a mere pittance compared to the thousands of dollars in administrative costs to prevent me from receiving fair and honest consideration.

I am a 66 year old SS Disability Claimant, with past careers as a Registered Nurse, including WW II Navy Nurse, executive secretary and Purchasing Agent. On 11/14/1977 at age 55, I filed an application for SS benefits at the Utica, N. Y.. SS office, claiming inability to work since Jan. 1975 because of degenerating arthritis in hands and neck, chronic bronchitis (both of which my medical records indicate began in the 1950's) and diffuse pulmonary fibrosis with only 57% breathing capacity because of the limitation of the scar tissue on my lungs.

I did not know until Nov. 1977 there was such a thing as SS Disability benefits, thinking SS was only for people 65 and older. My family doctor died in 1964. When I could no longer work in 1975, I tried to get medical care at the Syracuse VA Hospital , because my finances were low. Because my medical problem was not service oriented, they refused to give me medical help, until on May 7, 1977,I was so desperately ill that I refused to leave without help, which was given very grudgingly. I returned in the fall and was fortunate to be seen by the doctor in charge of the pulmonary outpatient clinic, who immediately realized how sick I was,and from that time, I have been under his care and supervision as a pulmonary outpatient.

I am explaining all this so you will understand why I did not have many medical records until 5/7/77 to indicate the severity of my illness,i.e. shortness of breath and fatigue upon exhertion, etc. I had very great difficulty getting my medical records released from my family doctor's widow and the VA Hospital until a NYS law was passed regarding availability of records to patients and with the cooperative help of Congressman Mitchel.

For some unfair reason SSA employees decided to reject my claim twice. I received a Notice of Denial 3/14/78 and 9/14/78. No reason was given to me for this denial, although I asked for one and had a right to know it. Please see my Disability Determination Record, filed 11/14/1977 at Utica, and note the following errors in it: 1. Incorrect SS #, later corrected at some future date. This error alone could have created many problems for me. 2. Under Remarks: It states: TEST CASE: WIRE NOTICE OF FAVORABLE FINDING. I received 2 notices of denial instead of this. 3. Diagnosis statement omits degenerative arthritis in hands and neck. 4. Rationale statement indicates lack of proper medical evaluation of 57% breathing capacity, causing shortness of breath and fatigue upon exertion. Since Utica SS refused to let me see my records, I did not know about these errors until my file was handed to me minutes before my hearing before Admin. Law Judge Tyminski 12/20/78. Even after SSA had sent me to be examined by Dr. Hwong, a physician of their choice, who verified I was unable to work, SSA denied my claim again on 9/14/78. I appealed this decision.

Following a AL Hearing 12/20/78, AL Judge Tyminski sent me to a respiratory specialist in Syracuse, N. Y., who also told me I was a Class A candidate for disability. This Administrative Law Judge determined 6/8/1979 that I was entitled to a period of disability commencing 11/28/1977. During the 12/20/78 hearing, this ALJ made a very baised remark to me, namely: "You look too healthy to be on SS Disability". I told him that my records indicated otherwise and that these medical records should be what he based his decision on. (Note that later, when needed, the tape of this hearing could never be found, so a whole new trial was held de novo. I believe it was because of this comment that this tape intentionally was "lost". Judge Tyminski was later removed from office.)

Despite medical evidence indicating my pulmonary and arthritic problems began back in the 1950's, gradually degenerating until I could no longer work in 1975, on pages 7,8,9 of his 6/8/79 decision, the AL Judge determined, because I had no medical records from 1975 until 5/7/77 (for reasons explained above), he chose to ignore the 5/7/77 diagnosis of diffuse pulmonary fibrosis and claimed I was not disabled until 11/27/77, after I had applied for SSDI benefits. For some reason known only to himself and other future AL Judges and Appeals Council members, I was deliberately denied credit for a previous onset date, as indicated on the 5/7/77 VA medical report. Even a lay person can understand that I did not suddenly become disabled after I applied for SSDI, with the type of diseases I have. One must have gone thru an acutely ill period to have developed profuse scar tissue on the lungs.

On Appeal, however, the Appeals Council affirmed the AL Judge's 6/8/79 decision re my disability onset date, also ignoring the 5/7/77 medical evidence, as well as that of the 1950's, which indicated the onset of degenerative arthritis, a healed TB lesion and chronic bronchitis, predisposing to chronic organizing pneumonia, which I have almost died of several times. (see my medical records inclosed.) The Appeals Council referred me to Civil Court Action if I disagreed with their decision.

All during 1980 followed very questionable treatment by SSA and Mr. Lowe, their attorney, of my civil case. (please review all the inclosed documents during that period carefully to see what unethical and alleged illegal measures SSA went to to harass and intimidate me rather than to admit their error in the onset date of my disability.) On 10/11/1980, my case was again remanded by Order of the Court, back to the Appeals Council for further administrative action. By its Order of 11/13/1980, the Appeals Council, noting that the remand was requested because a transcript of my 12/20/78 hearing before Judge Tyminski could not be prepared, remanded my case to Administrative Law Judge Beauchemin to hold a de novo hearing and issue a recommended decision.

Following the de novo hearing (I did not understand what that meant at the time and was stunned when I did), 2/11/81, AL Judge Beauchemin, while noting all my medical reports, disregarded them, claiming I was not under disability prior to 6/30/78. He refused to recognize a three month trial work period I had attempted in 1978, while waiting all 1978 and part of 1979 for a determination. SS law clearly spells out my right to up to a nine month trial work period, and I had been so instructed by Utica SS office upon initiating my claim 11/14/77. I had telephoned in the dates of start and finish of the trial work period in 1978, and was not aware that the Utica SS employee who took those messages had never bothered to enter the information on my record. I was thus being drastically penalized for someone else's inefficiency! Despite my explanation and my written record of dates I called in, AL Judge Beauchemin and all future Appeals Council members and Judge Medici refused to acknowledge my right to any trial work period. Judge Beauchemin's decision was that, because I was working those three months, I WAS NO LONGER DISABLED NOR ENTITLED TO DISABILITY BENEFITS! I allege that his unethical and dishonest actions were the result of the Reaganomic pressure at that time to throw as many disabled clients off SS disability rolls as possible. (See inclosed newspaper and DAV Magazine articles to this effect.)

On appeal, the Appeals Council, 8/27/81, adopted the AL Judge's decision determining that my three month trial work period in 1978 demonstrated that I had the ability to engage in my former employment as late as the latter part of 1978, with the conclusion that I was not disabled prior to 2/21/1979, when I was examined by a respiratory specialist, Dr. Miller, at the request of Judge Tyminski. They modified the AL Judge's decision, holding that I was entitled to disability beginning on 2/21/79. The Appeals Council sent their 8/27/81 decision to my DAV Washington representative, Mr. Harold Woods, who I relied on to take any further action necessary. I contacted him later only to discover that he had dropped the case.

I received no more information on what SSA action would be taken or what I was expected to do about the Appeals Council decision until 7½ months later, on 5/14/82, informing me that my full monthly SS benefits were being withheld until a full recovery of a $2,740.90 overpayment of all benefits I had received prior to 2/21/79!

(Please see copy of this 5/14/82 document and my accompanying clarifying notes.) At the top of page 3 of the SSN, a very confusing and erroneous statement is made re monthly payments. Also, very ironically, there is included the usual statement about being allowed to return to work for a trial work period up to 9 months, etc., when the document itself is informing me that I must forfeit all future monthly SS payments until the "overpayment" of $2,740.90, the total of previous SS benefits I had received up until 2/21/79, was repaid, becauseItook a 3 month trial work period!

Please note, also, it clearly spells out my right to request a reconsideration of the AL Judge's decision, which I promptly did, although, later, the Appeals Council and AL Judge Medci claimed I did not get my appeal request in on time, thus forfeiting my right to request any future consideration. On this false basis, they refused to consider or recognize any effort on my part to have my trial work period properly recognized for what it was, until, very grudgingly, the Appeals Council finally waived my repayment of this first $2,740.90 in their 7/13/84 decision, but still refusing to recognize my trial work period as such.

On 4/16/82, I appealed this decision and request for a $2,740.90 "overpayment" recovery on the basis of my right to a trial work period without losing my SSDI benefits. I also requested a review of the amount of my monthly benefits, as the July 1979 SS Notice of Earnings failed to include my 1978 trial work period earnings. (See inclosed news clipping re SS computer backlog causing a shortfall of benefits and SS Commissioner Svahn's order for a catch-up on recomputations.)

In consequence of this appeal, rather than address the reasons I gave re trial work period, etc., and the fact that the overpayment wasn't my fault and recovery would be unfair for these reasons, SSA would not consider this aspect, but demanded a complete financial report from me to determine whether I was financially able to repay! Again, I allege here is gross illegal error on their part. Under great protest, I sent in this Overpayment Recovery Questionnaire on 5/20/82. (See my 5/20/82 letter to Congressman Mitchel reviewing the unjust and inexcusable actions of SSA.)

On 6/18/82 a SSDI check for $2,740.90 was deposited to my checking account.
This Direct Deposit contained both my May and June SSDI payments of $262.80, totalling $525.60, not including the catch-up reimbursement I had requested 4/16/82. (My May payment had been omitted.) I assumed a favorable decision had been reached on the catch-up reimbursement. However, I awaited further explanation of this sum until June 30. When none arrived, I went to the Utica office (DO110) and asked a representative to contact the Baltimore office to clarify this deposit, since I was short two months' payments and was anxious to obtain them. This SS rep refused to investigate the matter in any way, just telling me to wait, even refusing to make a record of my visit to her office that day. Her refusal to do this led to many more horrendous problems for me, including another ALaw Hearing! In future SS decisions, I was made to look very dishonest about all this, rather than SS taking the blame for making these gross errors!

I awaited further clarification of this sum until 7/7/82, then, receiving none, I withdrew the money. On 7/8/82 I received a SS Notice stating the 6/18 deposit was in error, that that amount did include my May and June payments, but the amount they quoted was again incorrect. It should have been $262.80 x 2 or $525.60. (Please see the inclosed copy of this 7/8/82 SSN, as the errors therein and SS employees refusal to recognize it, caused me an additional AL Hearing and Appeals Hearing AND I DID NOT RECEIVE PAYMENT OF MAY AND JUNE 1982 SS BENEFITS UNTIL 12/22/86, 4½ YEARS LATER! !)

On 7/16/82 I reported this Notice to DO110, carefully explaining the additional error made in my May and June benefits, which caused an incorrect overpayment amount. I said once that was corrected, I would readily agree to having $100 deducted each month until the overpayment was recovered. PLEASE NOTE! THERE WAS NEVER ANY QUESTION ABOUT MY REPAYING AN OVERPAYMENT! ALL I WANTED THEM TO DO WAS WAIVE THE FIRST OVERPAYMENT, AND ARRIVE AT THE CORRECT AMOUNT OF THE SECOND OVERPAYMENT! THIS TOOK SSA UNTIL 12/22/86 TO ACCOMPLISH CORRECTLY! Thus on 7/16/82 I submitted a Statement and Report of Contact requesting that no benefits be withheld until my case could be reviewed, the erroneous overpayment figure corrected, and an answer to my 4/16/82 Request for Reconsideration re a trial work period, shortfall, etc. (see copis inclosed)

Not until Oct. 21, 1982 did I finally receive an answer to my various past questions. (Please see copy inclosed, plus my 10/28/82 response to the false claims in this Notice) This Notice claimed that my right to appeal the Appeals Council's decision on my disability onset had expired, thus disregarding their 4/14/82 Notice instructing me of my rights to a Request for Reconsideration, which I immediately applied for 4/16/82. By thus falsely denying me my appeal rights, they would only consider my request for waiver of overpayment (the first one), which they denied.

They erroneously claim I did not report the trial work period, blaming me instead of accepting responsibity for their own errors in these overpayments. They make a further mathematical error, in the next par, page 2, when they state the correct amount of overpayment is $2474.30. They indicate the correct amount I should have been paid, $533.20, but erroneously add it to the overpayment amount, rather than subtracting it to arrive at $2207.70 amount to be repaid. They then ironically go on to say that "a high degree of care is requested of SS beneficiaries", etc., when it is their continual errors that cause so many problems, plus their refusal to promptly recognize and correct them! (They also shortly after completely omitted my Dec. 1 payment, erroneously sending me a notice to pay them $48.80 medicare insurance for that month, which I did so my medicare would not be dropped. I DID NOT RECEIVE A REIMBURSEMENT FOR THIS MEDICARE PAYMENT UNTIL 2/3/84!

Each time SSA has denied my request for wiaver of payments, they completely ignore the second condition (they know already it was an error on their part) which states Recovery of overpayment would be against equity or good conscience OR would cause undue hardship. They never want to consider any other reason than whether or not I can afford to repay the overpayment, whether that figure is incorrect or not.

On 10/25/82 I visited DO110 and requested an appointment for a personal conference at the Utica office to clairfy all these SS mathematical errors face to face, but I never had this conference. On 10/29/82 I retained lawyer Paul Norton through the Legal Aid Society to attend this personal SS conference with me. Unfortunately, this lawyer did more damage than help to my case. Unknown to me, he cancelled my request for a personal interview at the Utica office and, instead, requested an administrative law hearing before a judge! He, too, refused to listen to the specific problem of incorrect overpayment recovery amounts, payment of June and May benefits, etc. (See inclosed 12/9/82 and 2/16/83 and 2/15/83 documents I sent to him, plus my 2/1/83 and 3/11/83 letters to Judge Medici trying to explain what I was seeking to do.) But he and the AL Judge Medici concentrated only on whether I could afford to repay both overpayments. My lawyer said very little and had not supplied the Judge with the evidence he had asked for. Judge Medici displayed an excellent example of his ancient ancestor by persecuting me merclessly, demanding to know how much my home and car were worth, how much my furniture and personal possessions were worth, how much money my 88 year old father had, anything that could be sold to repay the so-called overpayments! And Mr. Norton, my own lawyer, sat there and let Judge Medici intimidate and harass me, almost gleefully. I was in a state of shock when I left the court. It is a wonder I did not have a bad accident driving the 35 miles back home from Syracuse!

On 2/18/83 I discharged Mr. Norton for refusing to answer my phone calls and not representing me for the reasons I had requested as specified on my 12/13/82 Request for Hearing he had asked me to make out after he had switched my request for a local conference into a request for an administrative hearing. (see copy inclosed) (See also how Mr. Norton and the Judge changed my reasons completely on the 1/31/83 Amended Notice of Hearing! I allege this tactic to be dishonest and wicked and couldn't help, wondering after the smug way Mr. Norton acted at my hearing, if he and the Judge were not in collusion. I accuse them of falsely twisting the facts in a most contemptible and unconstitutional manner. Further, that ALJ Medici attempted to discredit my character in his 5/12/83 decision agreeing that I must repay both overpayments and directing SSA to verify, recompute and make adjustments consistent with his decision and to send me a detailed explanation of any adjustments made. This latter part of his decision was what I had originally asked for a personal conference for anyway, but his defamation of my character in a most slanderous manner, without basis or evidence, to give credence to his and SSA's poor performance and errors is using his power of office in an unjust and inhumane manner of solving conflicts of agreement. It should not be tolerated. (See my 5/25/83 statement to Appeals Council.) I did not receive this recomputed breakdown showing correct overpayment amount until 9/12/1985, after many additional SS errors, and even then it still was not correct, because it did not reflect my two missing May and June 1982 payments! I did not receive those until 12/22/86.

On May 25, 1983, I appealed his decision, claiming that both AL Judges were biased in favor of SSA and refused to recognize my valid medical records and my legal right to a trial work period.

In the Appeals Council's 12/14/1983 decision, they finally waive the socalled overpayment for the period May 1978-July 1979,(please make note of this,because at a later date SSA tries to make me repay a socalled overpayment to my son, Neil, for this period.) and request SS make adjustments for the underpayments out of the June 1982 overpayment of $2,740.90, which is what I asked SS to do back in July,1982. They still refuse to acknowledge any medical evidence for vacating its previous support of Judge Tyminski's appointed onset date of 11/28/77. On 12/26/83 I submitted a response to them regarding my onset date, asking them: "Since there is sufficient medical proof of diffuse fibrotic scarring as of 5/5/77, why do you keep refusing to recognize that I must have been very sick long before, when this disease was in an active inflammatory stage? If you chose to answer fairly and honestly this question, which I have sought for six agonizing and difficult years, I will not need an oral hearing. I feel that the continued avoidance of recognition of this applicable medical evidence to be "against equity and good conscience". (See copy of these documents inclosed.)

On 3/19/84, I received a very upsetting SS Notice addressed to my daughter, Susan Zaccari, at my address. I have not seen her, or my son, Neil, since their childhood. Why was this letter sent to my address, when Susan hasn't lived here in many years? Furthermore, I had no previous knowledge of Susan or Neil ever being given my social security number or that they had been collecting benefits on my SS number. I ALLEGE THAT SOME EMPLOYEE AT DO110 ON OR ABOUT 8/29/79 GAVE OUT MY SS NO. TO NEIL AND SUSAN ZACCARI WITHOUT MY KNOWLEDGE OR PERMISSION, WHICH ACCORDING TO THE "REPORT OF CONFIDENTIAL SS BENEFIT INFO" DATED 8/29/79 (COPY INCLOSED), GIVEN TO ME BY MR. T. PASTERNACK, IS CONFIDENTIAL BY LAW. When I asked DS110 employees how my children obtained my SS number, they were very defensive, saying according to law, the children had a right to this information without my knowledge. (See my 5/30/84 ltr to Northeastern Service Supervisor, Peter DeSturco, Margaret Heckler, 6/3/84 and Martha McSteen's 7/2/84 ltr- very important)

On 7/13/84 I received the Appeals Council's final decision stating: 1) the onset date remained unchanged 2) the first overpayment was waived 3) Recovery of adjustment to June 1982 overpayment subject to any offset resulting from any other adjustments (correction of short-fall from 1978 earnings or underpayments). The proper SS component is directed to verify, recompute and make any adjustments consistent with this descision, and is further directed to send claimant a detailed explanation of any adjustments made.

Despite numerous requests (see files), I was unable to obtain this detailed breakdown until over a year later on 9/12/85. Even then my May and June 1982 missing payments were not credited to me. Thus the total overpayment sum should still be corrected. (See my 8/6/84 letters to Mr. DeSturco and SSA.) Again no one would listen to me and correct this error. SS Benefit Info dated 11/20/84 still gives an incorrect amount to be repaid ($4,941.20). On 11/30/84 I again filled out a Statement of Claim & Request for Reconsideration requesting a correction. (Please remember, all these continued errors required a 30 mile round trip each time to the Utica DO110.)

On 1/16/85 I received a SS Benifit Info letter stating they were deducting $100/month, as I had requested, to recover the overpayment, but they give an erroneous figure of $210.30, which according to their incorrect computations, should have been $2,100.30, which still did not include deductions of my two missing May and June 1982 monthly payments! I reported this error to the Utica DO110, but not until 7/19/85 did I receive a letter from DO110, still indicating the incorrect figure of $2,100,30. On 7/22/85 I again requested through the DO110 the correct breakdown reflecting my two missing 1982 payments. On 9/12/85 I finally received a detailed breakdown as ordered by the Appeals Council 7/13/84, over a year ago. IT STILL DID NOT INCLUDE THE TWO MISSING PAYMENTS! My repayment was completed 9/86.

On 9/18/86 I received a SS letter charging me with a $1,352.10 overpayment for the period 5/78 thru 12/80 that Neil Zaccari, my son, had received. It said those funds were not payable due to the adjustment on this account 3/82 to correct the month of entitlement. (See copy inclosed and my 9/29/86 statement explaining that Appeals Council decision had waived my overpayment of funds for that period and my 11/14/86 statement re my two underpayments.)

As always, my requests and explanations were ignored! On 11/3/86/Neil's overpayment recovery action was initiated, but $164.70 was deducted monthly instead of the $100 agreed upon. I received no SS check on 12/1/86.
* See 2nd par below.
12/8/86 I received a notice from DO110 that a financial statement listing all my assets and expenses would be required of me before Neil's overpayment could be resolved, that SS would not waive that overpayment unless I furnished this information. I was very angry that SS refused to recognize that I had been waived repayment for the period 5/78 thru 12/80, never knew anything about Neil's payments and refused to be put through the demeaning experience again of having to account to SS for every penny I owned or spent. Thus I felt demanding I repay this money "WOULD BE UNFAIR FOR OTHER REASONS" than financial.

* I had visited the DO110 on 11/14/86 to report the 11/3/86 recovery action. At that time a rep wrote up a statement for me again explaining to SS why I was not at fault and should not have to repay this claim. He tried to get me to complete an overpayment recovery questionnaire, but I refused to do it.

On 12/8/86 Mr. Doyle of DO110 asked me to write up another statement for SS re why I felt repayment from my monthly benefits would be unfair. (See copy inclosed.) Again this was ignored.

On 12/22/86 SS notified me a check for $568 in "payment of an amount previously withheld". Giving such a vague reason, I believe, is why there are so many errors made by SS employees, or at least one reason. Good business practice indicates reference should be made as to when this money was withheld, thus clarifying records. I called Mrs. Gray at D0110 re my confusion over this odd sum and what it was repayment for.

1/5/87 The $568 deposited to my account.

1/7/87 I notified Mrs. Gray of the deposit, asking for further clarification. She requested I sent her a copy of the 12/22/86 Notice of the $568.60, which I did.

1/9/87 I received a call from Mrs. Gray that $568 was supposed to include my Dec. payment. I said I did not believe so, as the SS letter stated "amount previously due or whithheld" and that would not include Dec. check, which is not due until Jan. 1. She will check further with Mr. Doyle.

1/14/87 I received a SS Notice that, per my request, they were trying to locate Neil Zachary, but if unable to obtain a refund from him, action would be reinstated to collect that money from me. I had previously told them his last name is spelled Zaccari, not Zachary, as I spell it. Also, why wouldn't they have tried to locate him through his previous home in Utica, N. Y.? I feel SS employees handling this (Mr. McGowan of M31) was just to lazy to try to find Neil, so was determined to make me pay for it.

1/14/87 I took the above SS letter in to Mrs. Gray and asked her to please call Neil's stepmother at his former home and obtain his present address and phone number, which she did. She was supposed to send it promptly to Mr. McGowan, so that all this persecution of me for the overpayment would stop. In that 1/14/87 statement re Neil's address, I also asked for a clarification of the $568.60 check, asking if the missing $32 was a double deduction for medicare payments? She tried to get me to complete the Financial Questionnaire, telling me it was just a format and would probably not be used against me in the recovery matter.

1/21/87 Mrs. Gray had not sent in Neil's address the week before. She did not want to see me. Mr. Doyle saw me. I asked if he would be sure to send it in so SS could contact Neil and get him to repay the money. I do not understand why Mrs. Gray did not send this address in the week before. It appeared to me as though SS was not interested in trying to reclaim the money from Neil at all, but would deduct it from my benefits instead. I asked Mr. Doyle if he would send my statement in that day (1/21/87). He said Mrs. Gray would send it in.

1/23/87 A Utica rep sent in a Report of Contact to SS stating Premium tape did show $15.50 plus $17.90 from my 1/3/87 check, which totals $33.40. Why double deduction?

2/5/87 Mrs. Gray called me to verify that SS had erred in deducting double medicare payments.

A 2/7/87 SS letter was sent to me stating a check for $302 was being mailed to me as a refund of excess medical insurance premiums. (This $302 was in error and should have been $33.40.)

3/17/87 I telephoned Mrs. Gray re not yet receiving the $33.40 refund. I took copy of 2/7/87 SS letter in to Mrs. Gray for further investigation.

3/23/87 I again visited Utica SS office and requested Mrs. Gray to send in my written statement complaining of not receiving my refund and reporting the erroneous 2/9/87 SS letter. Mrs. Gray telephoned NEPSC and spoke to Mr. McGowan. He explained that an incorrect notice had been sent to me and that the $33.40 was deducted from O/P (?) balance. He would generate correct notice, adjust O/P amount and forward $33.40 to me.

3/31/87 Received SS notice that $33.40 was being mailed to me. This was finally deposited to my account on 4/3/1987. THUS IT HAD TAKEN 5 YEARS FOR ME TO FINALLY RECEIVE THE CORRECT AMOUNT OF MY MISSING MAY AND JUNE 1982 SS benefits!

On 4/6/87 I was forced through the needless indignity of having to fill out a complete resume of all my finances because SS would proceed to deduct the overpayment from my benefits if I did not submit this! (See copy inclosed in which I give Neil's correct address again, plus a repeat of all previous information I had given.) No reason was ever given to me of why they refused to recognize the Appeal Council's waiver of the period involved. Again, I was just ignored.

On 5/23/87 I received a SS letter telling me I had failed to include Neil's financial information and that to qualify for waiver approval I must establish that I am without fault, but also that recovery could cause me hardship!!! (See copy inclosed.) THIS LETTER IS BYOND ALL REASON AND CLEARLY INDICATES THAT MR. MCGOWAN HAD NEVER EVEN READ THE STATEMENTS I HAD SUBMITTED! IN HEAVEN'S NAME, WHAT KIND OF EMPLOYEES WORK FOR THE SSA?

On 5/26/87 I took the above SS letter and my answer in to Mrs. Gray, DS110. She contacted Mr. McGowan. He claimed this notice was not meant for me (but it was addressed to me!). It was originally sent to Neil at an incorrect address. (I had already sent them Neil's correct address twice, so why send this letter to me?) Mr. McGowan said he would send the letter to Neil, asking for his financial status. I mailed my prepared answer to the 5/19/86 letter to Mr. McGowan anyway.

During my 5/26/87 visit to Mrs. Gray, it became apparent that my 4/6/87 Statement of Claim and Overpayment Recovery Questionnaire were missing from my Utica office file. Since I had seen Mrs. Gray make copies of these and put them in my file on 4/6/87 during my visit to DO110 to submit these, I asked Mrs. Gray where those copies were. Mrs. Gray said "she" had called and asked her for a copy of my Overpayment recovery statement. I asked Mrs. Gray if she meant Patricia Zaccari, Neil's stepmother and Sam Zaccari's wife, who I believe, with the alleged unlawful aid of SS employees at DS110, was instrumental in obtaining the SS benefits for Neil and Susan back in 1978 thru 1980 without my permission or knowledge. Mrs. Gray admitted it was her. I BECAME SO UPSET UPON HEARING THIS, THAT I LEFT THE OFFICE WITHOUT SAYING ANYTHING, BUT IT PROVED TO ME THE LENGTHS OF UNETHICAL AND ILLEGAL ACTIONS THAT WERE BEING TAKEN BY SS EMPLOYEES.

On 6/5/87 I had regained my composure enough to telephone Mrs. Gray re my great concern/my 4/6/87 Statement of Claim and Overpayment Questionnaire and why she furnished this information to Patricia Zaccari. I said they had no right to leave my Utica office file and must immediately be returned by Patricia Zaccari, who had no right to that information, otherwise there would be no record of these very important documents, which I had fought against submitting for months, in my file there. Later that same afternoon, Mrs. Gray telephoned me back to say that Patricia Zaccari had called her and asked for a blank Overpayment Questionnaire Form and that was why Mrs. Gray had mentioned her name. But I DO NOT BELIEVE THIS STORY, ESPECIALLY IN COMBINATION WITH ALL THE OTHER UNETHICAL EXPERIENCES I HAD SUFFERED RE THIS MATTER OF MY CHILDREN'S SS BENEFITS!

On 7/10/87 I received an SSA letter (copy inclosed) denying waiver of Neil's overpayment, entirely ignoring my claim that the 7/13/84 Appeals Council decision had waived my repayment for that period, as well as Section 204 of SS Act, which states recovery shall be waived if: 1) person liable for recovery (who was Neil and not myself, but Mr. McGowan was obviously making no effort to obtain this from Neil, finding it much easier just to recover it from my benefits) is not at fault AND 2) Would be unfair for any other reason! And I had very clearly and repeatedly explained to SSA WHY IT WOULD BE UNFAIR TO RECLAIM IT FROM ME! This whole 7/10/87 SSA letter is a gross miscarriage of justice and SS Law!

On 7/14/87 I telephoned Mrs. Gray to report my receipt of 7/10/87 SS denial of waiver, which stated: "based on the evidence on record, you do not meet the requirements for waiver". I also asked her to set up an appointment for a personal conference concerning that decision, as indicated I could do in that letter. I also asked her to send me copies of SS Act, Sec 204 (a), (b), and Secs 404.506 thru 404.512 of SAA Reg. 4. I asked her if I should come in and appeal this denial decision that day or wait until after the personal conference. She said wait until afterr the conference. On this day and henceforth, I had great difficulty reaching Mrs. Gray by telephone, as her secretary would always tell me she was unavailable. She would not even offer to take my name and number and have Mrs. Gray return my call. I asked the secretary if I could leave a message and have Mrs. Gray return my call when she was available. Mrs. Gray never sent me the copies of SS Regulations I had requested, nor set up any appointment for me.

Please see copies inclosed of my 7/14/87 and 7/18/87 letters to Pres. Ronald Reagan, Dorcas Hardy, Peter DeSturco, Regional Director and Mr. Schultz, DO110 Director.

On 7/30/87 Mrs. Gray telephoned me to say she had not forgotten about my request for the SS regulations, but that she had been very busy. What a run-a-round she was giving me!

On 8/4/87 I received a brief notice from Myrna Reich, Director of Operations of NPSC, informing me they would not attempt to recover Neil's overpayment from me and apologizing for any concern this matter had cased me. I notified Mrs. Gray of my recipt of this letter.

On 8/6/ and 8/12/87 I received letters from Dorcas Hardy, Commissioner of SS, also notifying me of the discontinuance of SS efforts to recover Neil's overpayment. Her 8/12/87 letter was in response to my letter to President Reagan. THIS IS THE FIRST TIME IN 11 YEARS THAT SOMEONE HELPED ME BY TAKING DECISIVE ACTION TO CORRECT MR. MCGOWAN'S AND OTHER SS EMPLOYEES' ERRORS. I BELIEVE IT WAS BECAUSE I ASKED FOR PRESIDENT REAGAN'S HELP.

A year later, the unbelievable happened! On 8/6/1988 I received a SSA notice stating: "To recover (Neil Zaccari's) overpayment, we plan to withhold your FULL BENEFIT BEGINNING WITH THE PAYMENT YOU WOULD NORMALLY RECIVE ABOUT OCT. 3, 1988, AND CONTINUE TO WITHHOLD IT UNTIL THE OVERPAYMENT HAS BEEN FULLY RECOVERED"!!! WHAT KIND OF PEOPLE ARE WORKING FOR SSA AND HOW DO THEY KEEP THEIR JOBS??? (See my 8/8/88 response to Mr. Taffet, Director of NPSC, also Myrna Recih and Dorcas Hardy.)

On 8/8/88 I visited Mrs. Gray at DO110 to discuss and clarify how I could possibly have received such a letter after the case had been closed last year by Dorcas Hardy, Commissioner of SS, herself. (Please read my 8/12/88 letter to Mr. Rutkowski, Director of DO110, which indicates the problems I had with Mrs. Gray on 8/8/88 and his 8/16/88 response to me in which he tells me the 8/2/88 SS notice was in error and the case is again closed.)

On 8/9/88 I received a phone call from Annette Spencer, SS Benefit Authorizer, saying she was calling me at the request of Mrs. Gray, DO110, to inform me that the 8/2/88 notice was an error. I asked her to send me a written notice to this effect and an explanation of how this terrible error occurred. She said she would try to, but she never did.

On 8/27/88 I received another SS letter from M31, Martin Taffet, Director of NPSC, which caused me to be very upset again. (See copy inclosed) It thanked me for answering their questions over the telephone (when I never was asked any questions over the telephone, by Mrs. Spencer or anyone else.) It refers to an inclosed form showing the answers "you" (whoever that was) gave us, requesting me to verify and sign that inclosed form and return it to them. There was NO INCLOSED FORM WITH THESE ANSWERS ON IT! I BECAME VERY CONCERNED ABOUT WHO THE REFERENCED CALL WAS MADE TO, AND, SINCE IT WASN'T ME, WHAT DID THEY SAY AND WHY WAS I SENT THIS LETTER? Please see my 8/29/88 letters to Mr. Taffet, Mr. Rutkowski and Dorcas Hardy, also Mr. Rutkowski's 9/1/88 response to me. I DO NOT BELIEVE MR. RUTKOWSKI'S EXPLANATION THAT THE 8/23/88 SS LETTER REFFERED TO ANNETTE SPENCER'S PHONE CALL TO ME, AS SHE DID NOT ASK ME ANY QUESTIONS, BUT GAVE ME INFORMATION ABOUT THE ERROR IN REOPENING THE OVERPAYMENT CASE ONLY. I believe I was told this alleged falsehood to keep from explaining the questions I asked about that phone call in my 8/29/88 letters.

On 9/21/88 I received a letter from Mr. M. Carozza, Deputy Commissioner for Policy and External Affairs, which merely refers my complaint back to the New York SS office where it originated from. As you can observe in reading the evidence I have furnished you for the past 11 years, except for Mrs. Dorcas' positive action last August 1987 to close my case at the request of President Reagan, Mr. Carozza's reply is the typical type of put-off I have received.

I do believe many other claimants suffer from callous inefficiency of SSA employees, but do not have initiative, energy or knowledge to know how to report their negative experiences to the proper sources. As you can see from my own files, it seldom does any good, even when these iniquities are reported. This is what makes one feel so desperately victimized by the Social Security Administration and its insulated employees.

I do hope and pray the many hours it has taken for me to prepare this report for you will be used by your commission to help bring about many prompt and positive improvements, and that I will no longer have to be victimized by Mr. McGowan or other SS Employees involved in my claim.

Respectfully,

Norma Zachary

Incls

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October 5, 1988

OCT 6 RECD

The Honorable Sander Levin
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Levin:

The Senior Citizens Law Project is pleased to respond to your request for comments showing the need for the proposed Social Security Beneficiary Protection Act of 1988, H.R. 5250.

The Senior Citizens Law Project is a component of Southeastern Massachusetts Legal Assistance Corporation funded primarily under Title III-B of the Older Americans Act and serving elders in the greater New Bedford area. The Senior Citizens Law Project provides advice or representation to more than 300 clients annually. Approximately 12% of our cases involve income maintenance programs, especially Social Security and SSI.

The following incidents are taken from files of ours active within the past year. We believe they illustrate the need for procedural protections such as those contemplated by your legislation.

1. Ms. M. was widowed in June, 1987, at the age of 63. She was caring for a disabled adult daughter. Ms. M. assumed that the benefits she continued to receive after June, 1987, were widow's benefits. She contends that she was orally told this by Social Security Administration employees when she made inquiries. In fact, they were mother's benefits. The daughter died in December, 1987. On February 19, 1988, Ms. M. received a notice telling her that the checks she had received in December and January were wrongly paid, because of the daughter's death, and constituted an overpayment, but that she could apply for widow's benefits. (Ms. M. received 3 notices over a six-day period in February. They are attached as Exhibit A so that you may evaluate our opinion that they are mutually contradictory and confusing at best.) Ms. M. did apply for widow's benefits, but her eligibility extended back only to her application date in March. Thus, she forfeited

three months' income. Asked to reconsider its decision that an overpayment existed, the Social Security Administration refused, citing Schweiker v. Hansen. (Opinion enclosed as Exhibit B.) Even though she was not at fault in causing the overpayment of two months' benefits, she had to repay because her assets made her ineligible for a waiver. This inequity could have been avoided if the Social Security Administration had clarified Ms. M's status either following her husband's death or immediately after her daughter's death, without the lag of two months, or if her inquiry about entitlement to widow's benefits had been treated as a protective filing.

2. When Mr. C died in 1979, his wife was already disabled. Ms. C. contends that Social Security Administration employees mistakenly advised or informed her that she would not qualify for benefits as a widow until she turned 60 in 1984. Therefore, she did not apply. When she did apply in 1984, the Social Security Administration went back to 1983 but no further. In fact, Ms. C. should have qualified for disabled widow's benefits in 1979. Because of the rule of Schweiker v. Hansen, she has no remedy for the four years of missing benefits.

3. Ms. H. received a notice alleging overpayments totaling approximately $7,000 over a four-year period during which she had received various combinations of SSI, SSDI, and widow's benefits, and had also worked. Her request for waiver was denied initially and on reconsideration (face-to-face conference). Following the adverse reconsideration decision, the Social Security Administration notified her that even though she had appealed to the Office of Hearings and Appeals, recoupment would begin by withholding all but $81.30 from her next Title II check and the entire check thereafter. In fact, she never even received the $81.30 (a figure the significance of which continues to elude her and me). Ms. H. was left with income of $144 per month from a pension. I requested modification of the rate of recoupment, pursuant to regulations. The claims representative told me that she could not modify the rate of adjustment while the file was at the Office of Hearings and Appeals. Finally, the District Director agreed to modify the recoupment, but only at a rate sufficient to permit full recovery within three years, which worked out to 37% of Ms. H's regular benefits. Almost a year later, an Administrative Law Judge waived recoupment, finding that the claimant had reported her annual earnings to the Social Security Administration (despite their absence from her file) and could not have been expected to know that the benefits she received were excessive. Implicitly, the Administrative Law Judge accepted Ms. H's assertion that she had made telephone inquiries and been assured she was entitled to a lump sum check she had received.

4. In this case and another one I recently conducted before an Administrative Law Judge, there were favorable decisions involving awards of back benefits. In each case, the Social Security Administration withheld 25% as a possible attorney's fee, despite my having waived any fee on the Appointment of Representative form (Form SSA-1696-U4). Why have the advocate bother to complete this form if the Social Security Administration is going to ignore it? This policy causes needless delay to clients and a waste of time to advocates who must write additional letters to get the Social Security Administration to release the money.

5. Ms. Y. was told to refund two months' benefits on grounds that she had died. In fact, it was her husband who had died. The Social Security Administration made the correction on its own records quickly, but not before the Treasury Department, without notice to Ms. Y, made three "reclamations," totaling over $500, from her bank account. Our office has been trying unsuccessfully for six months to get this money refunded.

6. Mr. and Ms. M. speak only Portuguese, and he is completely illiterate. In May, 1988, they were notified that because their bank balance had increased above the resource limit, they were no longer entitled to SSI (their only income except for $400 gross rents) and had been wrongly paid a total of $7,400 for the preceding twelve months. Confused by the total of four notices, they took them to the District Office. The M's contend that their right to request a waiver was not explained to them, and, believing that they must pay immediately, they borrowed $3,700 from their children and gave it to the Social Security Administration. When we became involved in the case, we determined that the couple had spent the excess resources several months ago; i.e., the overpayment was much smaller than originally alleged by the Social Security Administration, and the clients were entitled to resumption of current benefits.

7. In Massachusetts, state supplementation of SSI is lowest for disabled SSI recipients, higher for the aged, and highest for the blind. Ms. M. is a totally blind, non-English-speaking woman, 78 years old, who has received SSI at the disabled rate since age 64. The Social Security Administration never changed her status, even to aged, and she was unaware of her entitlement to higher benefits. When she contacted our office on anther matter, we were able to get retroactive payments for one year, but the other twelve years' differential payments were lost to her.

8. Ms. V., an elderly widow who speaks only Portuguese, consulted our office on a real estate matter. We learned that she was repaying an SSI overpayment. When she received the notice, she took it to the District Office. Whoever talked to her did not inform her of her right to seek a waiver. The

overpayment had been caused by the Social Security Administration's mistake in calculating Ms. V's benefits. With our assistance, she applied for and received a waiver.

9. Ms. C., a non-English-speaking elderly woman, was receiving Title II benefits on her husband's account until they were divorced in April. Ms. C's daughter called or visited the District Office four times in the next two months to report this change and learn Ms. C's rights and responsibilities. At no time did Social Security Administration employees tell the daughter not to spend the Social Security checks that had been sent for April and May. Then in July, Ms. C. received two mutually contradictory overpayment notices about these two checks. Our office is seeking waiver of this overpayment, which would never have occurred if the District Office had acted immediately on the claimant's information.

These anecdotes exemplify the kinds of problems that we hope will be addressed by the Social Security Beneficairy Protection Act. Clearly, the Social Security Administration, processing an enormous amount of information, does justice to most claimants most of the time, and it is inevitable that some mistakes will be made requiring claimants to travel up the appeal process for correction. However, we see recurrent problems in the treatment of overpayments and in the provision of timely and comprehensible information to claimants, especially those with language or other communication barriers. Because the consequences of these errors can be dire, claimants are entitled to demand the highest levels of fair dealing from the Social Security Administration.

Thank you for your consideration of these comments.

Sincerely,

Deborah G. Roher

Deborah G. Roher
Staff Attorney
Senior Citizens Law Project

DGR/drc

GREATER BOSTON ELDERLY LEGAL SERVICES
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BOSTON, MASSACHUSETTS 02115
617-536-0400

October 4, 1988

Congressman Sander M. Levin
Congress of the United States
House of Representatives
Washington, DC 20515

Dear Congressman Levin:

My name is Nancy Lam. I am a paralegal with Greater Boston Elderly Legal Service in Boston, MA. I am writing in response to the letter you sent to Ms. Eileen Sweeney at National Senior Citizens Law Center regarding the House Bill you are co-sponsoring #5250, "The Social Security Beneficiaries Protection Act of 1988" and your request for examples of clients have been hurt by the SSA procedures.

I want to give you a few examples of my and my clients' experiences with the SSA offices.

1. I was told by the SSA staff to resubmit a new authorization because the one on the file was only good for one year after I had been working on the overpayment case for over 12 months. Even two authorization forms were in the file, the SSA contacted my client directly and had her sign a repayment statement to repay her overpayment without notifying me.

2. Many clients were told not eligible for waiver of recovery of their overpayments because the SSA staff felt they were at fault. They were also told to sign repayment statement to repay without being offered a waiver request.

3. A Chinese-speaking man who was the husband of a SS recipient was notified by the SSA staff to bring in $500. to the SSA office to repay an expected overpayment which allegedly had been incurred by his wife. The SS recipient had not yet received any overpayment notice at that time.

Because of the time limit, I can only think of these examples. I hope they would be useful.

Sincerely,

Nancy Lam

cc: Eileen Sweeney

CASLS

CAMBRIDGE AND SOMERVILLE LEGAL SERVICES, INC.
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October 5, 1988

Representative Sander Levin
United States House of Representatives
Washington, D.C. 20515

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Dear Representative Levin,

I am a paralegal employed by the Cambridge and Somerville Legal Services in Cambridge, Massachusetts. My caseload is comprised fully of Social Security/Supplemental Security Income applicants and/or beneficiaries. Thus, I am very interested in the bill which you are sponsoring, H.R. 5250. In support of this legislation, I would like to pass along an example which I have encountered in my work which illustrates one of the problems your bill hopes to correct. This example is but one of many similar situations seen on a daily basis.

Mr. X, has a Title II overpayment case. Mr. X began receiving Social Security benefits in April, 1980 due to a disabling cardiac condition for which he had had a multiple bypass surgery in 1979. Additionally, Mr. X suffers from recurrent bouts of depression and anxiety.

Mr. X incurred an overpayment due to sporadic work activity between 1980 and 1984. In 1984, his checks were stopped and he was told he owed the Social Security Administration (SSA) $4,483.20. Mr. X reapplied for benefits at this time, as he had not done any work at all since January, 1984. He applied in June, and in November received a check for "presumptive benefits" from June through September and was told that his case was still being decided. In January, 1985, he received notice that he was found medically eligible for Title II and Title XVI benefits as of December 21, 1985.

Attached are five letters received by Mr. X in March and April, 1987. I think these particular notices clearly illustrate the often confusing and misleading nature of SSA notices.

THIS AGENCY IS SUPPORTED BY
United Way

March 3, 1987: Social Security Award Certification stating that Mr. X has been awarded and will begin to receive Social Security benefits for current months and retroactive to January, 1986.

March 22, 1987: SSA notice stating that Mr. X had completed his trial work period and was able to perform substantial gainful work in October, 1986. Therefore, his last check should have been for December, 1986.

March 25, 1987: SSA notice stating that Mr. X was owed benefits from 1/86 to 1/87 and would, therefore, be receiving a retroactive check in the amount of $2,277.70

March 30, 1987: Report given to Mr. X by the district office of the SSA stating that his benefits are and should be $525.90 per month, effective 3/1/87.

April 1, 1987: SSI Award notice and information on retroactive payment.

Even those of us who work with Social Security cases on a daily basis had difficulty deciphering what these conflicting messages. He was told on the one hand that he was eligible and, on the other, that he was not. He thought the one telling him his checks should have stopped was wrong because of the letters which immediately followed, and, thus, did not respond. In October, 1987, he received notice that SSA was again reviewing his case. In March, 1988, he received notice that his checks were being stopped for work activity in 1986, and in April, 1988, he received an overpayment notice for $7,976.10, which, incidentally, included the previous overpayment which had already been deducted from his retroactive check in March of 1987.

Clearly these notices show so well the confusion created by poorly drafted and misleading SSA notices.

I am sorry I do not have time to go through my files and provide you with other scenarios, but I assure you, I would find many. I hope you find this one example helpful. If there is any way in which I could be of help in your efforts to pass this legislation, please feel free to call me at 617-492-5520.

Very truly yours,

Lyn Leg

Lyn Legere,
Paralegal

encl.

c.c. Eileen Sweeney

COMMUNITY
LEGAL
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October 4, 1988

OCT 6 1988

Sander M. Levin
U.S. Congressman
323 Cannon House Office Bldg.
Washington, D.C. 20515

Re: H.R. 5250

Dear Congressman Levin:

I write in response to your request for examples of problems people have had with the Social Security system. I am a legal services attorney with Community Legal Services, Inc. in Philadelphia and have observed many instances where my clients run into exactly the types of problems your bill is attempting to address. This letter is an attempt to give you just several examples; unfortunately, I do not have the time to set out the multitude of problems I have run up against.

1. **Problems of Mentally Ill Applicants**

I have been consulted by social workers working with the homeless concerning mentally ill applicants for Social Security disability benefits who can not provide proper identification, and therefore are denied Social Security and Supplemental Security Income benefits. A number of people were not able to produce birth certificates or provide enough accurate information on themselves for the Social Security Administration to identify them and locate birth certificates or Social Security numbers. The Social Security Administration frequently denied these people the right to even file an application for disability benefits, and after advocates insisted that they be allowed to file an application, they were denied for failing to be able to identify themselves. The Social Security Administration took the position that they could not give a new Social Security number to someone who could not document their identity, and without a Social Security number the Administration refused to grant any kind of benefits.

I am enclosing a copy of a letter to Senator Heinz concerning one such case. (Attachment A).

2. Misinformation from Social Security Staff Resulting in Failure to File an Application

As you know, Social Security regulations require that an application be filed in order for a recipient to be eligible for any benefits. Supreme Court law holds that even if a claimant is misinformed by a Social Security staff person and therefore does not file an application, no benefits can be awarded. This rule often has very harsh affects.

In one case I handled, a mother applied for survivor's benefits for her young son soon after the father died. The mother was pregnant with the man's second child at the time of his death and at the time of the application. The application was denied because the Social Security Administration decided that the father did not have enough quarters in his earnings record. Based on this information the mother did not apply for benefits for her second child after his birth.

Years later, the Social Security Administration determined that indeed the father did have sufficient quarters to award survivor's benefits to the children. Because an application had been filed for the one child, retroactive benefits were awarded for the elder son. However, because the mother had not filed an application for the younger child, that child was awarded no retroactive benefits. Yet, the only reason no application had been filed was because of misinformation from the Social Security Administration itself. It is patently unjust for the Social Security Administration to benefit in this way from its own errors. (See Attachment B).

3. Incomprehensible Overpayment Notices

My office has seen dozens of cases of Social Security recipients who receive incomprehensible overpayment notices. The notices are sometimes computer generated and sometimes manually generated. They frequently conflict with each other and do not include any detailed explanation of what caused the overpayment or how the overpayment is calculated. It is usually impossible to make a reasoned determination as to whether or not to appeal the determination of an overpayment, because there is insufficient information given to the recipient. As a result, we must frequently advise recipients to automatically request an appeal of an overpayment determination so as to obtain information on the basis of the claim.

The notices are so confusing and so inadequate that in most cases they violate the due process notice standards required by the Third Circuit case law.

4. Fault Determinations in Overpayment Waiver Cases

I am enclosing the U.S. Magistrate's decision in a case we took to Federal Court where the Social Security Administration refused to consider an old woman's blindness and other limitations, and found her at fault in causing an overpayment. The overpayment resulted from the Social Security Administration itself send her two different kinds of checks every month for a number of years. The case was finally won in Federal Court. (See Attachment C).

5. Failure to Cease Withholding Despite Timely Request for Reconsideration of an Overpayment

Enclosed please find a letter to a local Social Security Administration district office manager concerning the failure of that office to stop overpayment recovery despite a timely request for reconsideration. The letter is dated December 24, 1986, however, there has been no progress on this issue in that office. Indeed, the same thing happened again to this very same client in September, 1988. (See Attachment D).

Best of luck with your attempt to legislate some reforms to these problems.

Very truly yours,

Catherine C. Carr

CATHERINE C. CARR
Staff Attorney

cc: Eileen Sweeney
Enclosures
CCC/asb

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ANN S. TORREGROSSA
EXECUTIVE DIRECTOR

MARGARET A. LENZI
MANAGING ATTORNEY

OCT 6 1988

October 5, 1988

Sandra M. Levin, Representative
323 Cannon House Office Building
Washington, D.C. 20515

Dear Ms. Levin:

Thank you for inviting us to report to you about problems our clients have experience with the Social Security Administration procedures and practices. Several problem areas repeatedly occur.

There continue to be inordinate and extensive delays in the processing and issuance of payments of DIB and SSID benefits following favorable decisions. Six months or more is not uncommon. For diabled, blind, elderly individuals and families on incomes far less than the OMB non-farm poverty guidelines such delays often mean grave hardship. One client, for example is waiting benefits since March 1988 favorable ruling.

A related problem repeatedly occurs over the withholding of benefits to pay claims for counsel fees in cases in which repeated waivers of such fees have been filed. Nearly a year has passed in one such case and benefits continue to be witheld from the client to pay these non-existant fees. In many other instances fees have been withheld from a sequence of approved back benefits although waivers of such fees have been filed again and again.

Compounding the problem of assuring prompt and accurate payment of benefits following favorable decisions on entitlement has been the agency's repeated failure to provide counsel of record with copies of payment notices. Strangely, notices of subsequent action are on occassion continually sent to counsel even decades after representation in a few cases, while in many cases notices are not sent in the months following appearance by counsel in litigated administrative hearing claims.

Generally, agency personnel have been extremely reluctant to assist claimants approved for benefits in maximizing the benefits to which they may be entitled. Modest changes in living arrangements or in the legal characterization of such arrangements can make substantial changes in benefits under SSI's complex and bewildering in-kind income rules. Most beneficiaries are not aware of the effect of providing proof, for example, of their rental liability on the benefit level to which they may be entitled.

Sandra M. Levin, Representative
October 5, 1988
Page Two

Just as there are repeated problems is the processing of claims once approved, there are recurring problems at the application stage. Frequently, clients have contacted the local office of SSA to inquire about benefits and been dissuaded from applying. No record of such contact seems to be kept. On client, partially paralyzed by a trauma in the summer of 1987 stated he went to the office of the SSA in September 1987 to apply for benefits. Told he was not eligible, he made no application until he contacted our office in March 1988. He was subsequently approved, but the lack of retroactive medicaid coverage to the time of major treatment in the summer and fall of 1987 has left him with outstanding medical debts he cannot pay.

Frequently, concurrent claims for Title II and Title XVI benefits are not taken and processed. An elderly couple, for example, went to the SSA office to apply for SSI. They were steared to the Title II unit where an application was taken and processed. No SSI claim was taken until much later when the couple approached us about other problems. The couple lost $16.00/mth and medicaid benefits for many months. On these very limited incomes even a few dollars can be very important.

Clients frequently complain of the difficulties in applying. Many claim they have been asked to provide information and verification as a prerequisite to signing and dating an application. Since access to verification for poor, elderly, disabled and/or illiterate individuals may be difficult, this practice results in the effective denial of months of benefits even where an application is finally made and approved.

Thank you for your attention to these concerns.

Sincerely yours,

MKaufman

Mark Kaufman, Esq.
Anne Vaughan, Esq.

Social Security Advocates
Joel F Friedman, Esq.
Post Office Box 4187
Phoenix, Arizona 85030-4187

OCT 6 1988

October 5, 1988

Congressman Sander M. Levin
United States Representative
323 Cannon House Office Building
Washington, D.C. 20515

RE: H.R. 5250 - "The Social Security Beneficiaries Protection Act of 1988"

Dear Congressman Levin:

As Chair of a Phoenix-area advocacy and outreach group, consisting of attorneys active in representation of Social Security disability claimants, social workers, and representatives of the local Social Security and state agency offices, I have been provided a copy of your September 23, 1988 letter to Eileen Sweeney at the National Senior Citizens Law Center. We are very encouraged to know that many of the problems encountered on a regular basis during processing of our clients' claims have already been brought to the attention of the Legislature, and that efforts are being made to resolve those difficulties. Even though we are unable at this time to provide specific examples of individuals who have encountered the delays and administrative inefficiencies noted in your correspondence, I can assure you that we are routinely confronted with extraordinary systemic inadequacies that interfere with or preclude accurate and efficient processing of disability claims under both the Title II and Title XVI disability programs. The entire system, moreover, does not work well, covering all phases from the state agency reviews and even to conduct of litigation counsel for the Secretary of Health and Human Services in United States federal court appeals of administrative determinations.

The "Social Security Beneficiaries Protection Act of 1988" appears to address a variety of problems, especially at the Social Security district office level. We have all, as claimant representatives, experienced repeated instances where individuals have been notified that entire benefit checks are to be withheld to recover overpayments, contacts with the Social Security offices have not been recorded, and new applications have been required because appeal times have lapsed. It also appears that, until a case reaches the Administrative Law Judge level, the specific limitations of the individual with respect to cognitive or intellectual deficits, or minimal language skills, are not considered appropriately. Our review of the proposed legislation, H.R. 5250, encourages us to believe that continual problems in processing of disability claims, including at post-entitlement phases, are being addressed and attempts are being made to resolve those difficulties. We would therefore whole-heartedly endorse the recommendations to set standards for collection of overpayments prohibiting withholding of the full benefit; requiring personal accountability of Social Security employees who provide information over the telephone; clarifying the standard for determining good faith when an overpayment is incurred; requiring issuance of understandable notices; ensuring access for homeless populations to disability programs; and requiring a record, other than by reference to the Appointment of Representative/Acceptance of Appointment form, that a claimant is represented by an attorney or other agent.

In addition, we can unequivocally support the suggested requirement that a clear explanation be provided to claimants who receive adverse determinations that re-application may not, in fact, protect their rights as effectively as an appeal. Although the individual involved is not a client of mine, I can relate that I have been contacted by an Arizona resident who has now been off work for approximately three years due to an industrial accident in which he severely fractured both elbows. This gentleman ultimately received bilateral elbow prostheses, and he continues to be unable to completely straighten his arms or lift even an eight-pound one-gallon container of milk. When he and his wife inquired at the Social Security office in Casa Grande, Arizona, shortly after his discharge from the initial hospitalization, he was simply refused an opportunity to file an application for disability benefits. I have advised this individual to return, attempt to identify the Social Security employee who refused to accept the application, file a new application, and contact me if his claim is denied. It is patently unfair, however, that this person and his family will likely not be able to recover all benefits to which he maybe entitled, solely due to misinformation provided by an employee of the Social Security Administration.

The cited example is an even worse problem than Social Security offices not specifying the consequences of a failure to appeal, as there is absolutely no recourse when a claim is not even filed. If an application has been submitted, is denied, and no appeal is pursued, that individual at least has an opportunity to request reopening of the earlier claim if the second application is filed within a specified period of time. The legislation you have proposed will be very helpful to people like the man I spoke to recently, as a requirement that Social Security employees identify themselves and record all contacts would offer us a chance to establish that an inquiry was made but misinformation provided. Equitable estoppel principles could then be relied on if the Social Security Administration refused to consider payment of benefits from the time the individual was actually unable to work, based on the original inquiry.

The system-wide problems noted above do exist and are encountered on a regular basis. We have begun working with our local Social Security offices to determine how we may avoid continual difficulties obtaining information, expediting claim processing, and assuring attention to all relevant and material evidence. H.R. 5250, the "Social Security Beneficiaries Protection Act of 1988" would provide a more substantial basis for informal changes we have suggested locally, and would guarantee the same protections to claimants throughout the United States. In addition, you should also be aware that some of the inadequacies are apparently related directly to substantial reductions in staff at the local office level. Many of the more experienced and effective people, moreover, have left the agency due to the inordinate burden of dealing with the volume of cases without sufficient support services. Equal attention to administrative control of personnel placement would therefore also be appropriate, as the proposed legislation is likely to produce more work than the already limited Social Security staff is presently capable of handling.

We would request that you include this correspondence in the record of the Subcommittee on Social Security, Committee on Ways and Means, United States House of Representatives, in conjunction with consideration of H.R. 5250. If we can provide further information or assistance, we would appreciate your contacting us through my office. Thank you for this opportunity to contribute again to the legislative process.

Sincerely,

Joel F Friedman

Joel F Friedman

JFF:blb

cc: Eileen Sweeney
National Senior Citizens Law Center
Senator Dennis DeConcini
Senator John McCain
Congressman Jim Kolbe
Congressman Jon Kyl
Congressman John J. Rhodes, III
Congressman Bob Stump
Congressman Morris K. Udall

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October 5, 1988

Representative Sander M. Levin
Social Security Subcommittee
Ways and Means Committee
323 Cannon House Office Bldg.
Washington, D.C. 20515

RE: H.R. 5250, "The Social Security Beneficiaries Protection Act of 1988."

Dear Congressman Levin:

I am writing this letter in response to your request for examples of clients who have been hurt by SSA's procedures and who would benefit from the provisions of the above referenced bill.

I am a paralegal in the state of Massachusetts who provides legal representation to mentally ill people who have SSI/SSDI claims. I am providing you with the following examples from my caseload which illustrate the many problems my clients and others suffer in their dealings with the Social Security Administration.

1. My client's SSI application for SSI was completely destroyed or lost, both on paper and in the computer. This client had been previously denied benefits several times because SSA had erroneously counted his home as a resource. When the SSA finally determined that they were in error and awarded him benefits, it was still necessary to go to an ALJ hearing on the issue of the lost applications. The ALJ determined that the client had filed. When the file returned to the SSA District Office it sat on a desk for almost two months, despite weekly calls by the legal representative. After two months, the file was sent to a new DO where it was lost for a month. According to the SSA personnel, the secretary in the office had been told to clean up the office one day and had put the file in a drawer of an empty desk.

2. Another client who finally obtained benefits after 18 months received a termination notice the month after her first monthly benefit check. She was also issued an overpayment notice with the termination notice which was based on work activity.

When I contacted the local Social Security office about this case, I was told that there was a stack of 300 cases sitting "out back" with no one to develop them. I was also told that there was only one person making determinations.

3. A client was temporarily hospitalized at a public institution and had a Representative Payee. Despite this, SSA sent the large retroactive SSI check to the institution which promptly returned the check. Upon receiving the check back, SSA entered a computer code indicating that my client was in a nursing home. My client had never been in a nursing home. I provided evidence to SSA about my client's whereabouts but the Claims Representative told me that the computer would not accept the command to put my client back to pay status with a Representative Payee. After five (5) months, I personally went to the DO and spoke with another Claims Representative who made the necessary computer change and my client received SSI benefits.

4. My client, a young woman with anorexia nervosa and major depression and recent suicide attempts was discouraged by the Claims Representative when she attempted to file for SSI. The Claims Representative told her that it takes such a long time to do the applications, and what's wrong with her, she looks fine to me. These statements were made in my presence.

5. Another client of mine suffering from severe depression following a suicide attempt filed for benefits. The Claims Representative taking the application leaned over and asked, [j]ust for the record, how did you try to do it? My client left the SSA office in tears and has indicated that she does not want to talk to any SSA representative again.

6. One of my clients had repeatedly tried to apply for SSI Benefits but was told that my client's inaccessible, irrevocable trust was a resource to her. Only after my intervention, informing SSA of their own relevant section of the POMS, did SSA let her apply.

7. One of my clients informed SSA of her address change on several occasions. Despite this SSA sent her notice of denial to the wrong address and she thus did not receive this notice. Despite their not recording the change of address, the District Office did send her file to a different District Office although they sent it to a DO not in the client's district. Because this DO only received a shell file, this DO requested that the client file a new application, and sent this information to a third DO. This third DO then denied my client's Request for Reconsideration stated that she had not timely filed. After 18 months, my client was finally awarded benefits.

8. I had scheduled a personal conference at a local DO, and arranged to have my client brought to the conference from the hospital. The hospital staff brought my client to the conference which had been scheduled for 9 A.M. When we arrived, we were told that they had doubled booked appointments and could not take us. After an hour, I asked that the supervisor conduct the conference, but s/he was out for the day. The Office Manager simply refused to conduct the conference. SSA then refused to reschedule the conference and said that if we left, we would give our right to have any personal conference. After two and one-half hours they finally arranged for someone else to conduct the conference. This conference was held seven months ago, and to date there has not yet been a decision resulting from that conference.

If you have any questions, please do not hesitate to contact me. Thank you for your interest in this important issued facing thousands of Americans.

Sincerely,

Ellen M. Renzetti

Ellen M. Renzetti
Legal Representative

Brooklyn Legal
Services Corp. B

"South Brooklyn
Legal Services"

105 Court Street
Brooklyn, N.Y. 11201
Telephone: (718) 237-5500

John C. Gray, Jr.
Project Director

October 5, 1988

The Honorable Sander M. Levin
United States Representative
323 Cannon House Office Building
Washington, D.C. 20515

Re: H.R. 5250

Dear Congressman Levin:

I was happy to learn this week of your efforts to develop and pass legislation offering protection to Social Security beneficiaries from procedural failures of the Social Security Administration (SSA). It is the general experience of case-handlers in this office specializing in representation of claimants for Social Security disability benefits that the SSA is insensitive to the special problems faced by disabled persons in the claims process. SSA's insensitivity is felt most profoundly by persons least able to conform to established claims procedures, among them the homeless and mentally impaired.

The following case, drawn from our files, illustrates the kind of difficulties homeless and mentally impaired persons have in securing benefits due to them from SSA.

Steven B is a 30 year old Social Security disability beneficiary with a history of multiple psychiatric hospital admissions and treatment for a psychotic mental disorder. Mr. B had lived with his mother, herself a disabled mentally-impaired widow, until May 1987 when he left his mother's home and began to live on the streets.

Informed that Mr. B was no longer living at his mother's address, Social Security demanded, through the mother, that Mr. B produce evidence about this living arrangements.* Mr. B, who visited his mother weekly, was informed of SSA's request and presented himself at a local Social Security office, but could offer no coherent account or written records of where

Towards justice and
dignity for all.

Por justicia y
dignidad para todos.

---

*Information about a beneficiary's living arrangements is used by SSA to determine that person's benefit rate for payments under Title XVI of the Social Security Act.

he had stayed from day to day after he left his mother's home.

SSA responded to this situation by suspending Mr. B's monthly benefit check under the Secretary's regulation 20 C.F.R. §416.1322 for "failure to comply with [a] request for information." Mr. B received no assistance of any kind from SSA in developing needed information. It was not until a full year later, after legal help had been found for Mr. B, that benefits were restored and the requirement that Mr. B provide evidence of living arrangements dropped by SSA.

The posture of the SSA in Mr. B's case is one the Administration frequently adopts: regardless of the circumstances, the Administration demands compliance with established procedures. No special consideration is given to the special difficulties of homeless or mentally impaired persons. As a result, persons in those groups, often in desperate need, are deprived of benefits due to them.

Disability casehandlers in this office warmly endorse your efforts to compel SSA to offer special services to homeless and mentally impaired persons applying for and receiving Social Security benefits.

Sincerely,

William Gottlieb
Staff Attorney
Social Security Disability
Unit

WG:ef

cc: Eileen Swenney
National Senior Citizens Law Center

Barbara Samuels
Community Action for Legal Services, New York

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Attorney-in-Chief
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the Civil Division
Kalman Finkel

Attorney-in-Charge
Morton B. Dicker

IN REPLY REFER TO OUR NUMBER

October 5, 1988

OCT 6 [illegible]

Representative Sander Levin
Congress of the United States
House of Representatives
Washington, D.C. 20515

Dear Representative Levin:

We write with examples of problems we have encountered in representing and advocating for applicants and recipients of Social Security Disability and SSI benefits.

Our comments and examples represent the collective experience of a staff of attorneys and paralegals who have been practicing in this area for several years as part of a special grant to assist applicants for and recipients of disability benefits, as well as the general civil practice of our office. We also provide training for lay advocates and private bar attorneys and have consulted with private practitioners who have represented claimants and recipients on a pro bono basis.

1. Overpayments

We have observed many serious problems experienced by recipients who are charged with overpayments. Frequently the clients receive a series of inconsistent notices, with inconsistent deadlines, and with inadequate statements of the reasons for the alleged overpayment. We have never received a copy of an overpayment notice at the time it was issued, even when we are on record as the client's representative By the time the client is able to send us a copy of the notice for our review, the period for requesting waiver or reconsideration with aid continuing unaffected frequently has passed. Particularly in view of the high rents paid by our clients surviving on subsistence benefits in New York City, even a 10% recoupment of benefits can mean that the claimant falls behind in rent and risks eviction.

The new overpayment recovery questionnaire form imposes a tremendous burden on our clients. The form is lengthy, onerous, filled with leading questions, and leaves little space to explain the circumstances which excuse the overpayment. The detailed financial information called for can easily lead to errors in completing the form, and there is no clear indication on the form that the financial hardship data need not be completed by a claimant who continues to be eligible for SSI. (See 20 C.F.R. § 416.553.)

For example, we represented Mr. L. at a successful ALJ hearing. Mr. L does not speak or read English and suffers with a mental impairment. Although we received a copy of the hearing decision, we were not sent a copy of the notice requesting that he bring in documentation to establish the amount of his monthly SSI benefits. The district office did not request our assistance in obtaining verification as to amount or nature of Mr. L's public assistance payments.

The Social Security Administration apparently assumed that Mr. L. received benefits subject to an interim assistance agreement with New York State rather than Aid to Families with Dependent Children. Therefore, SSA erred in the amount of Mr. L's retroactive benefits.

Mr. L. subsequently received an SSI Notice of Planned Action which did not explain the nature of the overpayment, because he had in fact told the SSA claims representative the amount of public assistance he was receiving. The notice is dated August 3, 1988 but the envelope bore a postmark of August 9, 1988.

We were not sent a copy of the notice, although we were on record as Mr. L's representative.

Mr. L. received a second notice dated August 25, 1988 which gave no clearer factual explanation of the error which led to the overpayment. We made several telephone calls to SSA and ascertained the nature of the overpayment. With our assistance, Mr. L. requested waiver of the overpayment within 30 days of the receipt of the August 25 notice, by telephone call to the local office followed by submission of the completed SSA overpayment waiver request form.

Nonetheless Mr. L. received a third notice, dated September 26, 1988, labeled "Important Information," which announced that 10 percent of Mr. L's SSI payment would be withheld each month starting in November 1988.

Moreover, although there is no time limit on requesting a waiver of overpayment, the third notice did not list this as an option.

2. Failure to Send Correspondence to Representative

In addition to the failure to receive copies of overpayment ntoices, we have also experienced problems with failure to receive copies of other notices sent to our clients -- even though we have submitted appointment of representative forms. We do not consistently receive copies of award notices (usually only if benefits have been obtained as a result of a court appeal). We do not usually receive copies of notices requesting that our clients come to the district office with documentation to calculate benefits amounts, even when we have specifically requested copies of such notices (for example, when we have won a hearing for a frail or mentally impaired claimant).

Recently we have had numerous instances of not receiving copies of reconsideration decisions, jeopardizing our clients' appeal rights. For example, in the cases of Ms. P; an elderly, non-English speaking woman, and Mr. S., a homebound claimant suffering from dementia, we had been actively involved in advocacy at the initial application and reconsideration levels. In Ms. P's case, we had appeared at a conference at the district office and had called and written to the district office several times over the course of several months to request issuance of a decision. In Mr. S's case, we had written to the district office several times. In both cases we were not sent copies of reconsideration denials. In Ms. P's case, we did not learn of the issuance of a decision for months -- and therefore the time to request a hearing had already run.[1]

3. Failure to Record Appointment of Representative Form

On those occasions when we represent the client simultaneously on several different problems -- for example, at a hearing on a current application, and also in connection with a readjudication in a class action -- the different claims representatives do not know that we are representing the client, and SSA personnel working on different benefits or issues apparently are not given full copies of the relevant file (including appointment of representative form). This has occurred even when separate letters with copies of the appointment of representative form were sent to the different claims representatives handling each issue. Social Security district offices increasingly exemplify the left hand not knowing what the right hand is doing.

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[1] We can frequently repair these problems by persuading the district office to grant good cause for late filing or by arguing for a protective filing date. The extra effort involved is quite burdensome, howeve, and the unrepresented claimant cannot overcome some of these problems.

Similarly, even if the district office or the hearing office has the appointment of representative form physically in the folder, a person in the Program Service Center or another location has no copy of the appointment of representative form and often will not provide information by telephone. Our staff has experienced these problems particularly in communicating with Program Service Centers, which now make determinations on waiver of overpayments although they do not have direct contact with claiments (who continue to deal with the local district office). The problem is further compounded by the new, totally unworkable system of use of general phone numbers, since the person answering the call never has the claims folder physically present. These frustrating problems could easily be reduced by inputting the representative's name and address into the computer and by reproducing appointment of representative forms when separate files are created.

4. Other Recurrent Problems

a. We have frequently seen clients who reapplied for benefits numerous times in succession rather than appealing the denial of benefits. Substantial amounts of retroactive benefits can be lost due to this problem. Only in the event of mental impairments, language barriers, or similar problems can we overcome the loss of retroactive benefits.

b. Our clients frequently receive award letters which involve substantial amounts of retroactive benefits but contain no breakdown of how the total was arrrived at. A request for reconsideration is required simply to obtain the basis of the award. This is not efficient for us or for SSA.

c. The award letters themselves continue to be so complicated as to be unintelligible.

d. We have seen some clients who are deferred from filing applications by use of a "SSI Information" form (copy enclosed) which requires a second visit to the district office to file an application. We have been informed by district office personnel that use of this form is entirely discretionary and not guided by any criteria.

e. The new system utilizing central phone number, with no access to general numbers at the district offices, is absolutely unworkable. It is difficult to imagine another agency which could cut itself off from communication with advocates in this fashion. It is frequently impossible to get anything other than a busy signal at the central number. The person who answers the call rarely can solve the problem. There seems to be no purpose to this system other than to deter and deflect meaningful contact with the public.

We appreciate having the opportunity to share with you our experience in representing claimants before the Social Security Administration. If we can be of any assistance or provide any further information we would be pleased to do so.

Sincerely yours,

Kathleen Masters
Supervising Attorney

Susan Sternberg
Staff Attorney

Encls.:
- a) Sample overpayment notices
- b) Sample notice to client for district office interview
- c) Sample SSI Information form

CALS
Legal Support Unit
335 Broadway • New York, New York 10013-9990 • (212) 431-7200
Wilhelm H. Joseph, Interim Director

OCT 6 REC'D

October 4, 1988

Representative Sander M. Levin
Congress of the United States
323 Cannon House Office Building
Washington, D.C. 20515

Re: H.R. 5250, "Social Security Beneficiaries Protection Act of 1988"

Dear Representative Levin:

Per your letter of September 23, 1988 to Eileen Sweeney, I enclose herewith examples from two of the legal services offices in the city of instances in which client's fared badly in their dealings with Social Security District offices. Had we had more time to collect information I am absolutely certain that we could provide you with many, many more examples of people who received misinformation from Social Security personel or were otherwise shabbily treated by the Administration.

I will add only one further example: an advocate in Queens is assisting a deaf disability claimant with an alleged overpayment. Before this individual came to legal services she attempted to deal with the problem on her own but was never provided with an interpretor at the Social Security office and, therefore, could not make herself understood. She tried without success to file a request for reconsideration and waiver of the alleged overpayment but each time was refused. At no point did the district office have her file so they could determine what the problem was, nor did they make any attempt to obtain the file until a complaint was lodged with the Regional Commissioner of SSI by the legal services advocate.

I hope the enclosed examples are of assistance to you.

Yours truly,

B Samuels
Barbara Samuels

Community Action for Legal Services, Inc. • Christopher H. Lunding, Chairman • Dale Steven Johnson, Executive Director

LEGAL SERVICES FOR THE ELDERLY
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(212) 391-0120

NANCY B. BERGER
Staff Attorney

September 30, 1988

Representatve Sander Levin
Congress of the United States
House of Representatives
Washington, D.C. 20515

Re: H.R. 5250, "The Social Security Beneficiaries Protection Act of 1988"

Dear Representative Levin:

This letter is in response to your request for examples of clients who have been hurt by the service procedures of the Social Security Administration.

I have a 62 year old client with a mental disorder who had several problems with SSA's provision of services. My client, who I shall refer to as Mr. K, received SSI until June of this year at which time he became eligible for early retirement benefits. In June and July he received his full SSI checks as well as two monthly Social Security checks for $311.00 each. In addition, he received a check for $20.00. Believing he was not entitled to the two checks for $311.00 and the one check for $20.00 he sent them back to SSA. As a result he was put into death suspension and his benefits ceased, as did his Medicaid.

We got Mr. K back into payment status and in August he received a check for $642.00. Although he did not believe he was entitled to the check he did not want to send it back to SSA out of fear of once again being terminated from benefits. Accordingly we went to the district office to inquire about the appropriate course of action to take. One representative told Mr. K that, although he was not entitled to the money, he could not send it back to SSA but instead must wait to be cited for an overpayment. We were then told by a supervisor in the office that the check was a "windfall" to which my client was entitled and assured my client that he would not be liable for an overpayment.

Soon thereafter my client received an overpayment notice. On a subsequent visit to the district office the same supervisor advised my client, in writing, to ignore the overpayment notice and promised my client a forthcoming written explanation of his entitlement to the check and a corrected notice from SSA. My client never received the aforementioned documents. He has now filed a request for a hearing on all of the issues discussed above.

My client, who tried vigilantly to avoid receiving money to which he was not entitled and tried to spare himself the trauma of being accused of receiving an overpayment, was repeatedly misled by SSA personnel to his detriment. He received conflicting information about his entitlement to a large check and was given unfulfilled promises that remedial action would be taken. In addition, throughout the entire course of events, Mr. K has been verbally harassed by SSA representatives and was made to leave his district office against his will. Mr. K's mental stability, which is precarious at best, has been taxed to the breaking point.

Mr. K is also extremely confused by the notices he received from SSA. Specifically he has trouble understanding that OASDI and SSI are two entirely separate and distinct programs. Therefore when he receives a notice from SSI setting forth his benefit amount, but making no mention of the fact that he can also expect to receive an OASDI check, he fears not receiving his full monthly benefit.

Please contact me for further information on this client. We appreciate the work you have been doing on behalf of our clients.

Very truly yours,

Nancy Berger

Nancy Berger

NB/pl

QUEENS LEGAL SERVICES CORPORATION

MEMORANDUM

TO: Barbara Samuels

FROM: David Waldfogel - Queens Legal Services

RE: Problems Encountered at Social Security District Offices

DATE: October 4, 1988

Over the course of the last year, I have been made aware of the following problems which have occurred at local district offices:

- In two instances, claimants have gone to district offices with denial notices seeking to appeal (either request reconsideration or request a hearing). The claimants were not serviced, but given appointments to come back at a later date merely to file. This is very troublesome as statutes of limitation are involved.
- In one instance, a claimant with concurrent claims received a DIB denial notice but not an SSI denial notice. When he went to the office to appeal, he was told to wait until he got the SSI notice. Such notice never arrived, and several months later when he returned to inquire, he was informed that his time to appeal had expired as of sixty days from the date of the DIB denial.
- In at least two instances, claimants have received notices of reduction or termination of benefits, and such action was taken despite the fact that the claimant appealed within ten days.
- In two instances, claimants charged with overpayments were told that they could not file waiver application because they were over income.
- In general, claims representatives are unwilling to give information about awards to representatives who have filed 1696 forms. Similarly, the local offices will not explain delays in reconsideration decisions or the withholding of retroactive benefits - some times for a long as a year.
- In general it is extremely difficult to reach the district offices by phone as numbers are frequently changed and the information number (526-8600) routinely supplies numbers which are not in service.

jm

Oregon
Legal
Services
Corporation

Weatherly Building Suite 1000 516 S.E. Morrison Portland, Oregon 97214 (503) 234-1534

October 5, 1988

The Honorable Sander M. Levin
U.S. House of Representatives
323 Cannon House Office Bldg.
Washington, D.C. 20515

RE: H.R. 5250

OCT.6 REC'D

Dear Congressman Levin:

This letter is to inform you of difficulties experienced regarding Social Security by two clients our organization has represented.

The first client is Lindall Pearson. Mr. Pearson is 81 years old. Social Security reduced his benefits, forced him to repay an alleged overpayment and had, until we filed an action in Federal District Court, intended to reduce his benefits for life. (Subsequent to our filing the Secretary agreed to a voluntary remand of the case, the Appeals Council has vacated their order and is looking at the case on the merits.)

Mr. Pearson's problems began when his tax preparer filed an amended return in 1982 for the 1978 tax year. The return contained incorrect information and was not authorized by Mr. Pearson. This resulted in Social Security recalculating his benefit level, deciding that he was entitled to less benefits and then charging him with an overpayment for the time they held his benefits should be reduced. They also sought to permanently lower his benefits.

Mr. Pearson, knowing that a mistake had been made, began correspondence with Social Security. Over a period of time Mr. Pearson provided Social Security with his W-2 forms and a variety of other information relevant to his contentions. Finally, he approached our office because he was unable to succeed in straightening out his problem.

We sought a hearing with an Administrative Law Judge (ALJ), who found that the claimant was correct on all counts. The Appeals Council, on its own motion, then vacated the ALJ's order on the grounds that the claimant had not asked for a hearing in a timely fashion after he received his first notice of an overpayment. This ruling came in spite of his continual good faith effort to straighten things out.

My second claimant was a woman in her sixties who received notice of an overpayment. She was asked to repay the overpayment. The notice she received theoretically notified her of her right to a waiver and also requested that she state how much she could afford to repay. Our client, who is extremely low income, replied that she would repay the overpayment if she owed money to the government, but that she really was unable to make any payment because of her bills and financial problems. She pointed out in her letter that she would be unable to live on the money left to her after deductions for the overpayment were made. This letter should have been interpreted as a request for a waiver. It was apparent from the letter that the claimant met all the requirements of the waiver requirements. No sensitive reader could have reached a contrary result.

The claimant's eligibility for a waiver was later proven. The claimant sought our services, we requested a waiver hearing and were successful. However, a good portion of the overpayment had already been recouped, and that money still remains in dispute. Another hearing dealing with the recovered overpayment has been requested. I am unable to provide this client's name because I did not receive the request for instances of abuse in time to get a release from her.

I believe that Mr. Pearson's story is an unmatchable example of the artificial and unfair barriers the Social Security Administration erects in the way of claimants. I sadly suspect, however, that your efforts to collect examples of cases in which claimants have been hurt will prove me wrong.

Very truly yours,

Ira R Zarov
Ira R. Zarov
Attorney at Law

IZ:hb
cc: Eileen Sweeney, Nat'l Sr. Citizens Law Ctr.

LAW OFFICES
RURAL LEGAL SERVICES
OF TENNESSEE, INC.

NEIL G. McBRIDE
DIRECTOR

PLEASE REPLY TO:

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☒ COURTHOUSE SQUARE
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COOKEVILLE, TENNESSEE 38503
(615) 528-7436

October 5, 1988

Congressman Sander M. Levin
Congress of the United States
House of Representatives
323 Cannon House Office Building
Washington, D. C. 20515

Dear Congressman Levin:

You recently introduced H.R. 5250, "The Social Security Beneficiary's Protection Act of 1988." I wanted to take this opportunity to inform you of individuals that I have encountered in my work who would benefit from the provisions of such a bill.

The first example I would like to cite for you involves a forty-two year old gentleman referred to my office by the local representative of the Association for Retarded Citizens (ARC). When I first interviewed him, he was not even capable of informing me what the exact problem was. However, after contacting the local office of the Social Security Administration, I was able to determine that this gentleman had been receiving Title II Social Security benefits all of his life. The benefits were based on his father's earnings record. The Title II benefits had been overpaid for the period of January 1985 to June 1985. Subsequent to that, the gentleman became eligible for a monthly SSI check. During the annual certification for SSI, this gentleman ended up being terminated "due to lack of cooperation during a payment review." Please bear in mind here that we are talking about a retarded individual. This problem has been dealt with, and he has been reinstated and received his retroactive benefits. However, due to the inflexibility of the Social Security Administration in dealing with this man's limited mental skills, he ended up being without benefits for a period of time.

As to the Title II problem, the information that I received is that he was never advised as to his rights to file a waiver. He was never told that a percentage of, or a portion of, his monthly Title II could be applied against the overpayment. Instead, the Social Security Administration opted to offset 100% of his monthly benefit against the overpayment.

This problem has also been dealt with and collection efforts have been suspended, and we are in the process of filing a waiver. Obviously, the offsetting of this gentleman's entire check because of an overpayment situation resulted in severe hardship being worked upon him (reference number 3-88-7436).

The second case that I would like to relate to you involves a gentleman who is sixty-seven years of age. After starting to draw Title II benefits, the gentleman also received income from employment. He testified at a hearing before an administrative law judge that he was aware of the fact that this income would be limited in the amount that could be received without it having an impact on his Social Security checks. Unfortunately, he ended up in an overpayment situation. His testimony at his hearing clearly stated that he had contacted the Social Security district office to report his earnings. He testified that when he spoke with the person at the window, that they frequently did some writing and he assumed that they were making the necessary notes to his file. He was in no position to know whether or not they were completing an annual report form or whether they were simply making notes. He was, however, assured that the necessary information would be associated with his file and necessary action taken. In addition to his own testimony, there was testimony from his daughter, who on a couple of occasions accompanied him to the Social Security office to report the changes. There was further testimony from the daughter that due to her father's lack of education that she and other family members tried to help him take care of Social Security business, such as reporting income and completing forms.

Following the hearing, the administrative law judge requested that I contact the local office and secure a copy of the annual reporting form. In attempting to secure this information, I was advised that the annual reporting form is destroyed after three months. Consequently, the Social Security Administration took the inflexible attitude that if the report of contact was not documented, then it did not take placed! (File reference number 3-86-5196).

A third example that I would like to relate to you deals with a lady fifty-four years of age. This is a case that has been through a hearing before an administrative law judge; review by Appeals Council; review by district court;

remand by district court; another hearing by an administrative law judge; and I have just today received a copy of the Appeals Council decision holding that this individual's overpayment may not be waived.

During the initial hearing before an administrative law judge pertaining to the request for an overpayment, the claimant testified that her divorce had originally been reported in 1977 to the Social Security in the state in which she was living. She also testified that she had returned a check after that. She further testified that on a couple of additional occasions a girlfriend accompanied her to the Social Security office to report the checks were still being received and that she was divorced. She testified also that she had only a fourth grade education and was only able to read and write her name and a few other things. The judge ruled that she was at fault, and this began the long haul of administrative appeals. When the case was remanded back from the district court for a second hearing, the legal representative requested a psychological evaluation for purposes of determining literacy and I.Q. level. The psychometric results showed a Verbal I.Q. of 64, a Performance I.Q. of 73, and Full-Scale I.Q. of 66. The evaluator described her as being in " . . . the high deficient to low borderline range. . . " The evaluator's testing also confirmed the fact that she was illiterate.

Again in this situation, Social Security has taken the position that due to the records and telephone contact, as well as from personal contacts, they consider her not to have had any contact with the Social Security Administration. Again, they have been totally inflexible in dealing with an individual who suffers from proven mental deficiencies. (File reference number 3-87-5899).

The final case that I would like to make specific reference to deals with a sixty-seven year old lady who has been notified of an overpayment from the Social Security Administration. They wanted to collect the entire overpayment out of a single month's check. However, she was given the option of signing an agreement to repay at a smaller monthly rate. She was not given an explanation of the right to request a waiver of the overpayment. This action was particularly abhorrent on the part of the Social Security

Administration due to the fact that the overpayment was created by the Social Security Administration's incorrect computation of the lady's benefits. I am enclosing copies of correspondence that the Mid-Atlantic Program Service Center mailed to her on July 21, 1988. Specific identifying information has been deleted. When reading this letter, please bear in mind that it was mailed July 1988.

The number of times that I have encountered individuals who have been advised by representatives of the local Social Security office to reapply rather than to appeal a decision are far too numerous to mention. It is my experience that the Social Security Administration is doing a very poor job of advising folks of their right to appeal an adverse decision.

I hope the above-mentioned cases are helpful in your attempt to counter the Social Security Administration's claims that it is doing a spectacular job in providing service. While there are, in fact, many individuals within the Social Security Administration who are doing a spectacular job, the overall ranking of the Social Security Administration would remain very low.

If any additional information on any of these cases is required by your office, please feel free to contact me.

Sincerely,

M. R. Walsh
Paralegal

MRW:bp

Enclosures

cc: Eileen Sweeny, Nat'l. Senior Citizens Law Center

LEGAL ASSISTANCE FOUNDATION OF CHICAGO
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4655 South Michigan
Chicago, Illinois 60653
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NORTHWEST
1212 North Ashland
Chicago, Illinois 60622
489-6800

UPTOWN
4753 North Broadway
Chicago, Illinois 60640
769-1015

WEST SIDE
911 South Kedzie
Chicago, Illinois 60612
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SPECIAL PROJECTS

CHILDREN'S RIGHTS PROJECT
343 South Dearborn
Chicago, Illinois 60604
341-1070

CORRECTIONAL LAW PROJECT
343 South Dearborn
Chicago, Illinois 60604
341-1070

DIVORCE DIVISION
343 South Dearborn
Chicago, Illinois 60604
341-1046

ILLINOIS MIGRANT LEGAL ASSISTANCE PROJECT
343 South Dearborn
Chicago, Illinois 60604
341-9180

LEGAL CENTER FOR IMMIGRANTS
1661 South Blue Island
Chicago, Illinois 60608
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DISABILITIES LAW PROJECT
343 South Dearborn
Chicago, Illinois 60604
341-1070
TDD 431-1206

PRIVATE ATTORNEY INVOLVEMENT PROJECT
343 South Dearborn
Chicago, Illinois 60604
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SOCIAL SECURITY DISABILITY PROJECT
343 South Dearborn
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341-1070

WOMEN'S LAW PROJECT
343 South Dearborn
Chicago, Illinois 60604
341-1070

October 5, 1988

My name is Jeannette P. Tamayo and I have been a staff attorney at the Eighteenth Street office for three years. During that time, I have assisted numerous individuals, most of whom do not speak or understand the English language but are fluent in the Spanish language. The most common problem presented is the Social Security Administration's (SSA) failure to send notices in the Spanish language. Below of are some anecdotes highlighting this particular problem.

Marta S. came to my office approximately two years ago. She brought with her a letter from the SSA. According to Marta's friend, a Spanish-speaking person who barely spoke English, Marta was entitled to Supplemental Security Income benefits. According to the letter, which was solely in English, Marta was denied Supplemental Security Income (SSI) benefits and needed to appeal that adverse decision. Until Marta came to me, she had no idea that she had been denied benefits and that there was a time limit in which to appeal.

Esther M. came to my office recently. She thought that the Illinois Department of Public Aid (IDPA) was arbitrarily denying her disability benefits and wanted to investigate this. As proof, she presented me with two letters. One was from the IDPA cancelling her various benefits because SSA had determined that Esther was not disabled. The second letter was from the SSA denying her SSI application and advising her of her appeal rights. The first letter was partially in Spanish and so Esther understood that a cancellation was imminent. The second letter was in English and Esther had no one that could translate it for her. When Esther came to my office, she had one day left in which to appeal SSA's denial. And, she only came to our office because of IDPA's letter.

Finally, on a very personal note, I remember being kept from grade school and later high school to accompany my mother to the Social Security Administration's office to apply for social security cards for my brothers and sisters and, once, to report a lost card. I had to go because no one at Social Security spoke Spanish and could help my mother complete the forms.

Jeannette P. Tamayo
Staff Attorney, Eighteenth Street

LEGAL ACTION OF WISCONSIN, INC.
230 West Wells Street, Room 800 • Milwaukee, Wisconsin 53203
414/278-7722

October 5, 1988

Representative Sander M. Levin
323 Cannon House Office Building
Washington D.C. 20515

Re: H.R. 5250 "The Social Security Beneficiaries Protection Act of 1988"

Dear Representative Levin:

This letter is written in response to your request for information dated September 23, 1988 from Legal Services attorneys and paralegals. You requested case examples showing how the Social Security Administration's procedures have hurt recipients of Supplemental Security Income (SSI) (Title XVI) and Social Security (Title II). As Legal Services attorneys who have seven years of combined experience in this area, we have seen many disabled and elderly applicants and recipients who have been hurt by the Social Security Administration's policy and practices. The following examples will illustrate some of the problems people have experienced.

(1) A.G., a hispanic man, was receiving benefits on his father's record as a disabled child. He was overpaid Social Security benefits because his brother was found eligible for benefits on the same record, retroactively e.g. A.G. was notified in June, 1988 that he was overpaid $2000 from January, 1988 - June, 1988. Obviously, A.G. was completely without fault in causing the overpayment. The local district office withheld his entire Social Security check in order to recoup the overpayment, leaving him with only a small monthly SSI check. In addition, he was made to sign a statement agreeing to hand over to SSA an SSI retroactive check he was due, to repay part of the overpayment. (It should be noted that cross-program recovery is prohibited by federal law.) A.G. suffers from a mental impairment. He also speaks only Spanish and did not understand any of the notices he received, or the statement he signed. On occasion, he was "thrown out" of the local district office for aggressive conduct when he went in to find out why his benefits were so low. This case is presently on appeal.

Milwaukee Area Office	Kenosha Area Office	Madison Area Office
230 West Wells Street Milwaukee, Wisconsin 53203 Serving: Milwaukee and Waukesha Counties.	5630 Sixth Avenue Kenosha, Wisconsin 53140 Serving: Kenosha, Racine and Walworth Counties.	31 South Mills Street Madison, Wisconsin 53715 Serving: Dane, Dodge, Columbia, Jefferson, Rock and Green Counties.

(2) Robert was a disabled child who lived with his parents and received Social Security benefits and AFDC. The father was disabled and received Social Security and SSI benefits. When Robert turned 19, his Social Security and AFDC benefits ended and he applied for SSI and Social Security as a disabled adult. His father thought it would be good for Robert to live independently, so he made his attic into a small apartment for Robert. Since Robert had no money, he did not pay any rent and also had meals with his parents downstairs. Since Robert's father was on a limited income, the understanding was that Robert would reimburse his father when he received his retroactive SSI and Social Security benefits. A year later, Robert was approved for benefits, but his retroactive SSI was reduced by one-third the federal benefit rate because he received "in-kind support and maintenance" from his father while he was waiting for his SSI and Social Security to be processed. We appealed this reduction and we are presently waiting for an ALJ decision. Meanwhile, it took two years for the Social Security Administration to issue any retroactive benefits to Robert. The benefits were finally issued only because his attorney intervened.

The lack of a time limit for processing applicatons and for issuing benefits once an application has been approved really hurts our clients. To add insult to injury, SSA then also reduces a claimant's retroactive benefits by one-third for receiving help from friends and relatives while waiting for benefits.

(3) C.G. was born in Puerto Rico in 1894. He was blind, disabled, illiterate and spoke only Spanish. In 1981, C.G. applied for SSI, but his application was denied because he was found not to be a citizen of the United States. This finding was based on a statement signed by C.G. which states that he took an oath of allegiance to Spain. The statement was written by SSA in English and C.G. marked the box next to it with an "X"--not understanding what it meant.

C.G. subsequently attempted to apply for SSI several times, but was denied verbally each time for the same reason. In 1982, SSA received a statement from INS stating that persons born in Puerto Rico were U.S. citizens, but SSA disregarded this and again denied C.G. his SSI. In 1985, with the assistance of counsel, C.G. proved that he had not taken an oath of allegiance to Spain and was in fact a U.S. citizen and was granted SSI by an ALJ. However, the ALJ refused to give benefits back to 1981 due to administrative finality.

During this entire period from 1981-1985, C.G. only received one notice in Spanish and he was not assisted in appealing the denials, even though he kept going back and reapplying. The case was appealed to Federal Court. The District Court held that the case should be reopened. C.G., however, died before he received any benefits.

This case raises several issues:

(1) The lack of Spanish language notices to recipients who do not speak English.

(2) The lack of assistance from district office personnel to recipients to appeal denials, terminations and reduction of benefits.

(3) Inadequate notices to clients.

(4) J.G. worked as a migrant farm worker in Puerto Rico. He came to the United States several years ago. He applied for Social Security disability benefits and was denied because he lacked some quarters of coverage for disability benefits. J.G. found that several of his migrant employers had failed to report work that he had done in Puerto Rico. We obtained statements from the employer, but while some quarters were added to his earnings record, some were barred due to the statute of limitations of 3 years, 3 months and 15 days. The case has been remanded by the Appeals Council to the ALJ to consider the argument that the Statute of Limitations does not bar reopening because of the employer's fraud in not reporting wages to SSA, pursuant to 20 CFR.823(e)(3).

(5) O.W. is the father of a minor disabled child who receives SSI. O.W. works in the construction business which is seasonal. His hours vary and he is laid off periodically. When he is laid off, he receives unemployment compensation. In some months, he receives both U.C. and wages. O.W. also has other children, some of whom are in school and some out of school. Under the federal regulations, some of O.W.'s income is deemed towards his minor disabled child. The deeming rules vary depending on whether the father has only earned income (wages), only unearned income (U.C.), or a combination of earned and unearned income. In addition to the different deductions for earned income and

unearned income, there are allocations for ineligible children. These allocations also vary, depending on whether the child is in school or out of school. In other words, the deeming calculations are a nightmare. O.W. reported changes in his employment status promptly. He usually reported by going to the local district office, or by mailing his lay-off notices, recall notices or check stubs to the local district office. There is no monthly report form at the Social Security Administration for this purpose. Very often, these reports are not documented in the case file. In addition, the claims representatives often delay in making the changes. This causes O.W. to be overpaid or underpaid very often. We have represented O.W. in several overpayment waiver cases.

The records in these cases are a mess; and frequently, we have found that the overpayment amounts are incorrect. The district office personnel have admitted that the deeming rules are so complicated that in most cases, families cannot understand how a parent's income affects a recipient's SSI benefit. Despite this, district office personnel deny requests for reconsideration and waiver of overpayments. In most overpayment cases, recipients are sent notices which tell them of their right to request reconsideration and waiver of the overpayments, but we have rarely seen district office personnel explain the waiver provisions to an overpaid recipient, even if that recipient is mentally impaired, illiterate or non-English speaking.

(6) M.H. is an elderly, disabled widow who had been receiving SSI disability benefits. Her Social Security claims representative told her to apply for widow's benefits when she reached age 60 because her benefits would be higher.

Six months before her 60th birthday, she applied for widow's benefits which were granted as of her 60th birthday. She then received the following series of confusing notices:

(a) 1/12/88 from Social Security: This notice granted M.H. widow's benefits. It stated that Social Security would withhold widow's benefit checks for 11/87 and 12/87, while checking on past due amounts to SSI. It awarded benefits as of 1/88 in the amount of $282/month, first check to be paid in 2/88. (Exh. A)

(b) 2/17/88 from SSI: This notice charged an overpayment of $282 for 2/88, based on M.H. receiving widow's benefits. To collect, it stated that SSI would withhold $47.67/month beginning in 5/88. (Exh. B)

(c) 2/25/88 from SSI: This notice stated that M.H. would receive continuing benefits of $30.52 per month for individual disability. (Exh. C)

(d) 5/10/88 from Social Security: Referred to 1/12/88 notice. It stated that M.H. would not receive back benefits for 11/87 and 12/87. It also stated that the next check for 5/88 "will be reducing your Social Security benefit by $553.00." (Exh. D)

M.H. came to our Elderly Advocacy Project completely confused by these notices. The seperate notices from SSI and Social Security were not coordinated in any manner understandable to M.H. A benefit specialist helped her appeal the overpayment and also request a waiver of the overpayment. This appeal is now in process.

(7) W.E. is a 66 year old black woman with a limited education who is receiving SSI. She was charged with an overpayment which resulted from excess assets she received after her husband's death in 1986. These excess assets totalled approximately $6,000.00.

She appealed the overpayment and asked for a waiver. She was found "with fault" and the appeal denied. "With fault" means she knew, or should have known, that she was receiving excess benefits. Reasons to be "not-at-fault" include being illiterate, or not able to comprehend due to mental impairment.

W.E. came to our Elderly Advocacy Project because she did not understand what was happening with her benefits. Our benefit specialist questioned her and realized that she was confused about the SSI process and did not understand the overpayment. She could not recall dates. The benefit specialist then went with W.E. to the local Social Security office. She discovered that the Social Security representative had explained the overpayment to W.E. several times, yet W.E. had remained confused. The benefit specialist sat in on a meeting between W.E. and a claims representative. W.E. was still obviously confused, yet no note of this was made in her file.

The time limit for appealing the denial of the overpayment and waiver had expired, but the benefit specialist assisted M.E. in filing an appeal with a good cause exception for filing late, based on her inability to understand the process. That appeal is now in process.

(8) B.R. is a 57 year old, disabled woman who had been receiving SSI disability benefits. On May 18, 1988, she received a check from Social Security in the amount of $5,824.00 No notice was received with this letter. B.R. called her local Social Security office to find out what this check was for. Over the phone, she was told to deposit the check in the bank and wait for a notice letter. B.R. called Social Security back because she was still uncertain, and this time she was told this check was really for her husband, (although her name was on the check). She gave the check to her husband who immediately cashed it. He spent some and gave the remainder to his daughter. B.R. then received the following, out-of-sequence and confusing notices:

(a) 5-25-88 from Social Security. Notice dated 5-18-88 that the check was for her and was a back payment. (Exh. E)

(b) 5-19-88 from State of Wisconsin, Dept. of Health and Social Services. Notice that her Title XIX medical assistance was stopping 6-1-88 because she was no longer eligible for SSI. (Exh. F)

(c) 5-24-88 from SSI. Notice that her SSI payments were stopping as of 5-1-88, effective 7-1-88. (Exh. G)

(d) 6-15-88 from SSI. Notice of overpayment for 5/88 and 6/88 in amount of $469.44. (Exh. H)

(e) 8-22-88 from Social Security. Notice that B.R. received May check for $5,824.00 in error. Therefore, assessed overpayment in amount of $6,949.00. (Exh. I)

B.R. was unable to get the $5,824.00 back from her husband. She came to our office becuase she had no idea what to do. She had relied on the misinformation from Social Security given to her over the phone in May, much to her detriment. We are assisting her in appealing the overpayment, requesting a waiver and getting medical assistance back through the state program.

(8) L.W. is a disabled man receiving $451.00 per month in Social Security benefits. His wife applied for disability benefits and was approved in 1986. She started receiving $56.00 per month in Social Security and $196.00 per month in SSI benefits. Prior to the approval of her SSI, L.W.'s wife was receiving AFDC for their children. Once she started receiving SSI, she was removed from

the AFDC grant and the children continued to receive AFDC. The Social Security Administration never informed L.W. that, as an eligible couple, he too could receive SSI (their combined Title II benefit was less than the SSI benefit amount for an eligible couple.) The impact of L.W. not receiving his SSI payment was not only the loss of several hundred dollars in SSI from 1986 to the present, but also the loss of about $300.00 per month in AFDC, from 1986 to the present, for the children. If L.W. had been receiving SSI, all his income would have been exempt from budgeting in the AFDC program. As it is, L.W. was included in the AFDC grant and his Title II benefits were budgeted against the children's AFDC grant. The children, therefore, only received $22 per month in AFDC. If L.W. had received SSI, the children would have received about $325.00 per month in AFDC.

When I questioned the local district office personnel about this case, the response was that L.W. never filed for SSI. L.W. assumed that he was receiving the maximum benefit he was entitled to. He does not understand the rules and regulations or payment amounts in either the SSI program or the AFDC program. The only reason he came to Legal Action was because he was sent an overpayment notice.

These cases are but a handful of the many cases we see at Legal Action of Wisconsin. To many of our clients who are poor, disabled and/or elderly, the Social Security Administration is a faceless bureaucracy which intimidates them and makes their life very difficult.

Your interest and advocacy on behalf of these vulnerable people is greatly appreciated.

Sincerely,

Shirin Cabraal

Shirin Cabraal
Attorney at Law

Lisa Clay Foley

Lisa Clay Foley
Attorney at Law

Oak Orchard Legal Services, Inc.
serving
Orleans, Genesee and Wyoming
Counties

RECEIVED

OCT 3 1988

REPLY TO: ☐ **Orleans County Office**
20A East Bank Street
P.O. Box 190
Albion, New York 14411
(716) 589-5628

☒ **Genesee County Office**
17 Masse Place/Suite 27
Batavia, New York 14020
(716) 343-5450

☐ **Wyoming County Office**
401 North Main Street
Warsaw, New York 14569
(716) 786-3489

September 29, 1988

Edwin J. Lopez-Soto, Esq.
Greater Upstate Law Project
87 Clinton Avenue, North
Rochester, NY 14604-1478

RE: EILEEN SWEENEY REQUEST

Dear Ed:

I had one overpayment (SSDIB) case where the client "lost" their benefits completely for 2-1/2 months.

Very truly yours,

OAK ORCHARD LEGAL SERVICES, INC.

Vicki Wysocki

Vicki Wysocki
Paralegal

VW/ba

Southern Tier Legal Services Case

One of our clients was a thirty-eight year old man received SSD and also worked two to three days a month. SSA occasionally reviewed his case for budgeting purposes. Approximately 3 1/2 years after he'd been working, he was sent a notice informing him that based on the work he'd done for 3 1/2 years, he was obviously no longer disabled. At the same time he was charged with an overpayment of approximately $30,000.00 It took Social Security Administration over three years to put together the information about this person's intermittent work history and then they dated the time that he became able to work again three years retroactively. This case was finally resolved in federal court!

At no time was this client told about the $300 SGA level. Nor was he given a chance prior to termination of showing that his earnings though over $300/month on some occasions on the whole did not average $300/month.

Finally, the notice never explained to the client the relation between $300 and the possibility that it meant that he was no longer disabled.

GARY FLACK
ATTORNEY AT LAW
141 WALTON STREET, N.W.
ATLANTA, GEORGIA 30303

(404) 522-1936

OCT 6 - 1988

October 4, 1988

Representative Sander Levin
323 Cannon House Office Building
Washington, D.C. 20515

RE: H.R. 5250

Dear Representative Levin:

I appreciate your introduction of The Social Security Beneficiaries Protection Act Of 1988.

Social Security overpayment problem are myriad, and frequently not the fault of claimants. I represented the plaintiff in Jefferson v. Heckler 794 F.2d 631 (11th Cir. 1986) (copy enclosed). As you can see, in the Eleventh Circuit, the Social Security Administration is required to consider the specific subjective circumstances of the claimant in determining fault. You might want the legislative history of the bill to ratify this decision.

Homeless individuals are a growing problem in Atlanta. I have represented two individuals successfully in court after losing throughout the administrative levels. Unfortunately, by the time of the favorable court decision, the individual could not be located. Perhaps the Social Security Administration could authorize night shelters to complete disability and SSI applications on behalf of homeless individuals. Also, perhaps these claims should be evaluated on an expedited basis.

Equally deplorable is the tendency of the Social Security Administration to write letters which are not clear. I have also enclosed a computer printed administrative law judge decision cover sheet and the older printed format. While neither cover sheet is a model of clarity, my office has gotten more questions over the newer form. That is form HA-L5023-U7 is more easily understood than form HA-514-C6 probably because of the different sized printing and use of titles.

Please feel free to contact me regarding the subject matter of HR 5250.

Very truly yours,

Gary Flack

Gary Flack

GF:jkp

Enclosures

LEGAL SERVICES OF MIDDLE TENNESSEE
800 Stahlman Building, 211 Union Street
Nashville, Tennessee 37201
(615)244-6610

September 30, 1988

The Honorable Sander M. Levin
House of Representatives
323 Cannon Office Building
Washington, D.C. 20515

RE: Perry Kimbro
SSN: 415-20-0174

Dear Congressman Levin:

I am writing to you on behalf of my client, Mr. Perry Kimbro, in response to your letter of September 23, 1988 to Ms. Eileen Sweeney. Your request is most timely as I am just completing work, after nearly two years, on a Social Security overpayment in which virtually every possible error was made by the Social Security Administration.

My client, Mr. Perry Kimbro, is sixty-three years old and disabled. In October of 1982, his disability benefits were erroneously terminated and he did not appeal. As a result of the Disability Benefits Reform Act of 1984 and membership in a medical improvement class action, Mr. Kimbro had his disability benefits reinstated effective February of 1986.

As a result of a computer error, Mr. Kimbro was paid $717.00 per month for February 1986 through April 1986 rather than the correct amount of $436.00 per month. This resulted in an overpayment of $843.00. On May 13, 1986, Mr. Kimbro was sent a notice demanding that he refund the entire overpayment within thirty days and stating that, absent a refund, his entire benefit would be withheld to recover the overpayment.

On May 21, 1986, Mr. Kimbro requested waiver of the overpayment. On September 30, 1986, he was sent a notice stating that although he was without fault in causing the

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overpayment waiver was denied because "verification of your finances is insufficient to prove financial hardship."

Mr. Kimbro appealed and obtained my representation. We went to the Social Security Office on October 29, 1986 for a personal conference with a claims representative. At that time, we submitted a verified statement showing that Mr. Kimbro and his wife had monthly income of $1,286.00, monthly expenses of $1,296.00, and total savings of $39.00. The claims representative who met with us recommended that waiver of the overpayment be granted. Her recommendation, however, was reviewed in a Program Service Center and an anonymous employee there noticed that one of Mr. Kimbro's expenses was an $80.00 per month payment on a debt with a balance of $199.00. On December 23, 1986, Mr. Kimbro was sent a notice stating that waiver of the overpayment was again denied despite the absence of fault because Mr. Kimbro would be able to afford repayment after his debt of $199.00 was paid off.

I requested an administrative hearing on Mr. Kimbro's behalf. I advised Mr. Kimbro that Social Security might attempt to recover the overpayment prior to the hearing and asked that he contact me if that happened. Mr. Kimbro was in fact sent a notice stating that his entire benefit would be withheld for two months to recover the overpayment. No copy was sent to me and Mr. Kimbro, being discouraged, did not contact me. He and his wife borrowed money from a bank to meet their expenses during the two months when benefits were not paid.

Mr. Kimbro appeared with me at his administrative hearing on August 18, 1987. A that time, he submitted a verified statement showing that he and his wife had monthly income of $1,367.00, monthly expenses of $1,342.00, and total savings of $247.00. On August 31, 1987, the ALJ issued his decision. He found that the Social Security Administration should not have withheld Mr. Kimbro's entire benefit and ordered that the money withheld be paid to Mr. Kimbro. The ALJ again denied the waiver request, finding that Mr. Kimbro could afford repayment at the rate of $25.00 per month, the difference between his verified expenses and verified income. Following the ALJ decision, the money previously withheld was refunded and recovery commenced again at $25.00 per month.

On April 11, 1988, the Appeals Council denied review of the ALJ's decision. I wrote to the Social Security Administration Office of General Counsel indicating my intent to seek review in federal district court and asking about their interest in reaching a settlement. I must say that the response from General Counsel was sympathetic and helpful. Nonetheless, they indicated that they could agree to waive the overpayment and, again, refund money withheld only after I filed a federal court complaint. I did this and the Secretary then entered an agreed order that waiver be granted and the amount withheld released to Mr. Kimbro. Earlier this month, Mr. Kimbro was paid the amount previously withheld finally bringing this matter to a conclusion.

I hope this information is useful to you.

Sincerely,

DAVID A. ETTINGER
Attorney

DAE:mjm

LAW OFFICES
**RURAL LEGAL SERVICES
OF TENNESSEE, INC.**

NEIL G. McBRIDE
DIRECTOR

PLEASE REPLY TO:

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COURTHOUSE SQUARE
COOKEVILLE, TENNESSEE 38501
(615) 528-7436

October 4, 1988

The Honorable Sander M. Levin
U.S. House of Representatives
323 Cannon House Office Building
Washington, DC 20515

Dear Congressman Levin:

Our client, Patsy Hill, has authorized us to send you the enclosed Magistrate's opinion that dramatizes the injustice which can be caused by the decision in Schweiker v. Hansen.

Briefly, our client was repeatedly advised by agents of the Social Security Administration in its LaFollette, Tennessee district office, that she was not eligible for mother's benefits, although she did receive child's insurance benefits. Some time after eligibility ended, because of the age of her child, she brought a newspaper article to the LaFollette office which indicated that she had in fact been eligible. Officials at the office then agreed that she was eligible. She filed a written application for mother's insurance benefits, but her application was denied because eligibility had ended.

Ms. Hill filed an appeal to the U.S. District Court, on her own, which recently upheld the ALJ's denial, relying on Schweiker v. Hansen. The Magistrate's opinion speaks for itself. I can only add, as an attorney, that I wish that members of Congress could have the experience, before they vote on your bill, of explaining to Ms. Hill why it is fair for her to be denied benefits to which she is clearly entitled because she applied for them late, when she was late because the Social Security Administration told her not to apply and refused to take an application.

If you need any more specific information on the circumstances of this case, please feel free to contact our office. We are writing you because there is absolutely no other recourse for this client.

Sincerely,

Neil G. McBride
Attorney at Law

NGM:db

**LEGAL SERVICES ORGANIZATION
of INDIANA, INC.**

CURRY BUILDING, 2ND FLOOR
242 WEST SEVENTH STREET
BLOOMINGTON, INDIANA 47404

(812) 339-7668
toll free 1-800-822-4774

October 4, 1988

Congressman Sander M. Levin
323 Cannon House Office Building
Washington, D.C. 20515

RE: Social Security Administration service problems

Dear Congressman Levin:

We are responding to your request to Eileen Sweeney of the National Senior Citizens Law Center for examples of certain problems encountered by Social Security and SSI recipients.

You requested examples of misleading and confusing notices. Deciphering SSA notices is frequently a problem for trained advocates, much less disabled and elderly beneficiaries. The enclosed notice, dated June 24, 1988, is one obvious example of the pitfalls of computer generated notices. Often, notices are more subtly misleading, as in the September 30, 1985 notice which misled the recipient into believing that re-application was as good as or even preferable to appeal. In September 1985, the recipient was terminated retroactively to March 1981. He reapplied rather than appealed since he was "still disabled," a logical decision based on this notice. Even though he was eventually found disabled back to November 1982, he was awarded benefits only back to September 1984 due to the one-year retroactivity of benefits policy. The case is now awaiting decision by an Administrative Law Judge.

The latter case has been further complicated by the lack of records of telephone calls from the claimant reporting that he had returned to work. Having relied on telephoned reports, the claimant now has no proof of his calls and is facing recoupment of a $60,000.00 overpayment.

* Another problem related to notices, or rather a lack of them: claimants often receive back awards and new monthly payments without any notice to explain what the money represents. If the district office is queried, it takes several weeks to get an explanation. By that time, claimants, hounded by creditors for months and even years before finally receiving their benefits, have spent the money. If an error was made, they will eventually be charged an overpayment.

I hope this information will be helpful to you in improving the functioning of the Social Security Administration.

Sincerely,

CJ Holly

Christopher J. Holly
Paralegal

CJH/maf
enclosure

Social Security Administration

Supplemental Security Income

Notice of Planned Action

46C

Date: June 24, 1988

Claim Number: [redacted] DI

[redacted] FOR
MIKE [redacted]
[redacted]
BEDFORD IN 47421

* Type of Payment *
Individual--Disabled

We are writing to tell you about changes in MIKE [redacted] Supplemental Security Income payments. The following chart shows the SSI money due him for the months we changed. As you can see from the chart, we are changing his payments for both past and future months. The rest of this letter will tell you more about this change.

THE PAYMENTS OF MIKE [redacted] WILL BE CHANGED AS FOLLOWS:

From	Through	Amount Due Each Month
June 01, 1988	June 30, 1988	$.00
August 01, 1988	Continuing	$354.00

We will reduce his payment as shown above beginning August 1988.

WHY MIKE [redacted] PAYMENTS CHANGED

Because of his income he was not eligible to receive Supplemental Security Income payments for June 1988.

INFORMATION ABOUT MIKE [redacted] PAYMENTS

His regular monthly check of $121.00 will be sent to you about the first day of August 1988.

MIKE [redacted] PAYMENT IS BASED ON THESE FACTS

He has monthly income which must be considered in figuring his eligibility as follows:

- His Social Security benefits-- before deductions for Medicare premiums, if any-- of $253.00 for July 1988 on.
- His special one-time payment of Social Security benefits-- before deductions for Medicare premiums, if any-- received June 1988 of $2,177.06.

SSA-L8155

INFORMATION ABOUT MIKE [redacted] BACK PAYMENTS

We sent him a Social Security check for $2,177.06 in June 1988. We will not count the part of this money which was due for back payments as his resource for 9 months. If the money is not spent before April 01, 1989, we will count any money left over as part of his resources. But things bought with this money may count as resources the month after they are bought. Your Social Security office can tell you which things count as resources. In 1988, he cannot get SSI if the resources we count have a value of more than $1900.00. For 1989, the limit on resources is $2000.00.

THINGS TO REMEMBER

- We may be in touch with you later about any payments we previously made.
- This decision refers only to his claim for Supplemental Security Income payments.
- This determination replaces all previous determinations for the above periods.
- This information is also being sent to MIKE [redacted]

DO YOU THINK WE'RE WRONG?

If you think we're wrong, you have the right to appeal. We'll correct mistakes. We'll look at any new facts you have.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you get this letter.
- You'll have to have a good reason for waiting more than 60 days.
- To appeal, you must fill out a form called "Request for Reconsideration." The form number is SSA-561. To get this form, contact one of our offices. We can help you fill out the form.

APPEAL IN 10 DAYS TO KEEP GETTING YOUR SAME CHECK

- We won't change MIKE [redacted] check if you appeal within 10 days.
- The 10 days start the day after you get this letter.

- If you lose your appeal, you might have to pay back some or all of this money.

HOW TO APPEAL

There are three ways to appeal. You can pick the one you want. If you meet with us in person, it may help us decide your case.

- Case Review. You have a right to review the facts in your file. You can give us more facts to add to your file. Then we'll decide your case again. You won't meet with the person who decides your case.
- Informal Conference. You'll meet with the person who decides your case. You can tell that person why you think you're right. You can give us more facts to help prove you're right. You can bring other people to help explain your case.
- Formal Conference. This is a meeting like an informal conference. The difference is we can make people come to help prove you're right. We can make them bring important papers about your case, even if they don't want to help you. You can question these people at your meeting.

IF YOU WANT HELP WITH YOUR APPEAL

You may want help from a friend, lawyer or someone else. There are groups that can find you a lawyer. Some can give you a free lawyer. We can give you the names of these groups.

IF YOU HAVE ANY QUESTIONS

If you have any questions, you may call us at area code (812) 334-4222. We can answer most questions over the phone. You may also write or visit any Social Security office. The office that serves your area is located at:

716 N WALNUT
PO BOX 548
BLOOMINGTON IN
47402

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.

H. R. Doggette Jr.

Herbert R. Doggette, Jr.
Deputy Commissioner,
Operations

DEPARTMENT OF HEALTH & HUMAN SERVICES

[redacted]

[illegible]
6060 Sunrise Vista
P.O. Box 196
Citrus Heights, CA. 956

September 30, 1985

[redacted]
Carmichael, CA. 95608

A person's disability ends if he or she becomes able to do substantial gainful work. (At the present time earnings over $300 a month usually are considered substantial and gainful). Benefits will be paid for the month disability ends and two additional months. Not until a person has completed a 9-month trial work period is a decision made as to whether he or she has become able to do substantial gainful work.

The evidence in your case shows that you completed a 9-month trial work period in 12/78 and became able to do substantial gainful work in 1/81. Therefore the last check you were eligible for was 2/81. We are taking action to stop your benefits.

If you had Medicare and were still disabled that protection continued for up to three years after you were eligible for your last monthly benefit check.

You will be notified later if you are overpaid any benefits.

If you are still disabled you may file a new disability claim for a new period od disability. We will mail the forms to complete if you wish.

If you believe that this determination is not correct, you may request that your case be re-examined. If you want this reconsideration, you must request it not later than 60 days from the date you receive this notice. You may make your request through any Social Security office. Id additional evidence is available, you should submit it with your request. Please read the enclosed leaflet for a full explanation of your right to question the determination made on your claim.

If you have any questions about your claim, phone or visit any Social Security office. Most questions can be handled by telephone. However, if you visit an office, please take this notice with you.

DALE L. BUCHANAN
ATTORNEY AT LAW
SUITE 7605, 6300 BUILDING, EASTGATE CENTER
CHATTANOOGA, TENNESSEE 37411
(615) 894-2552

October 3, 1988

Honorable Sander M. Levin
323 Cannon House Office Building
Washington, D. C. 20515

Dear Congressman Levin:

In response to your letter of September 23, 1988, to Eileen Sweeney, i am sending some examples of real people who have been hurt by the Social Security Administration's procedures and actions. These are but a few of the examples of injustices or problems encountered by my clients during the five years that I have represented disabled persons. I simply do not have time to search my files to find the many more cases of unfair actions on the part of the Administration. I would like to emphasize that the examples enclosed are the tip of the iceberg and not aberrations or particularly bizarre cases. As I am sure you understand I have deleted the names and account numbers of the clients involved. I am sure that these clients would consent to be contacted to verify the truth of these statements if necessary.

1. The first example is that of an award certificate recently received by one of my clients. As you can see, this incomprehensible letter was generated on January 27, 1988, at the Office of Disability Operations in Baltimore. (Enclosure 1)

2. Example number two consists of selected excerpts from a recent decision one of my clients received. This decision incidentally, was the third issued by the same administrative law judge, who has refused to recuse himself after denying the claim for the third time. The client, a borderline mentally retarded black man has been living on handouts from relative and friends for over four years while fruitlessly waiting for a fair decision. The client recently informed me that he wants to give up on his appeal since it is so obvious that he can never expect a fair decision and he does not want to be subjected to any more abuse. (Enclosure 2).

3. Third, is but one of several cases involving persons of limited means who have had all or most of their checks withheld because of an overpayment. In this case, the client was rendered a paraplegic by an automobile accident while he was driving his employer's vehicle. He was initially awarded Worker's Compensation benefits by virtue of being injured while on the job. Subsequently, his attorney was successful in obtaining a substantial settlement after suing a third party. This law suit resulted in a lump sum award which the client used to purchase a specially equipped van which is necessary for his wife to transport him to his doctors and physical therapy sessions. When the client was awarded disability insurance benefits, the Social Security Administration imposed a nearly total offset, refusing to recognize that the Worker's Compensation benefits has been replaced and/or paid back by the third party settlement. A feature of the third party settlement was a small monthly annuity, which the Social Security Administration insisted was also a Worker's Compensation benefit and subject to offset. In this case, as I have found to be standard procedure in offset cases, the Social Security Administration delayed for interminable length of time in answering appeals of the overpayment. When the client was faced with losing the van, which he needed to get to his doctors, and he and his wife who is also disabled could not pay for medications or medical services I had to resort to filing a Chapter 13 bankruptcy for the client in order to force the Social Security Administration to cease the offset and to respond to the appeal of the offset. Finally, when faced with a Court Order from the United States Bankruptcy Court, the Social Security Administration relinquished the monthly withheld benefits. A delay of over a year ensued however, before the Social Security Administration finally restored the client's improperly withheld lump sum payment. (Enclosure 3)

I have found the Social Security Administration to be exceedingly slow and unresponsive to appeals of offset errors. Delays of more than a year are the norm and not the bureaucratic delaying. I have also found that it is very difficult to learn the status of offset cases. It is very frustrating that instead of making an appealable decision, the Social Security Administration will often respond to appeals with a letter, after months of delay, simply rehashing the old information without affording or informing of appeal rights. An unrepresented claimant has virtually no chance of obtaining a fair or even a comprehensible decision on an offset/overpayment problem.

I am extremely pleased to read of your bill; The "Social Security Beneficiary Protection Act of 1988." Such a bill has long been needed.

In representing disability claimants over the last five years, I have found the practice to be very frustrating in that the Social Security Administration often seems intent on not only discouraging persons from exercising their rights to benefits but also attempting to discourage them from obtaining attorney representation.

Nevertheless, I have also found that the representation of disabled persons is a very satisfying law practice. I can think of no group of clients more deserving of help and more in need of it.

Please do no hesitate to contact me if I can be of further assistance in furnishing information to your subcommittee.

Sincerely,

Dale L Buchanan

Dale L. Buchanan

DLB:db
Enclosures:
1) SSA Award Certificate dated 1/27/88
2) Decision of ALJ dated 8/31/88
3) ODO Decision dated 8/4/86 with accompanying correspondence on this case

Phone 703/762-5501

P.O. BOX 147

[illegible] 5 OCT

CLIENT CENTERED LEGAL SERVICES
OF SOUTHWEST VIRGINIA, INC.
CASTLEWOOD, VIRGINIA 24224

Serving
BUCHANAN COUNTY
DICKENSON COUNTY
LEE COUNTY
CITY OF NORTON
RUSSELL COUNTY
SCOTT COUNTY
TAZEWELL COUNTY
WISE COUNTY

HUGH F. O'DONNELL, Executive Director
DIANE F. DUSSEAU, Senior Staff Attorney
MARTIN D. WEGBREIT, Senior Staff Attorney
MARGARET T. SCHENCK, Staff Attorney
PAUL G. BEERS, Staff Attorney
SHERRY L. WILSON, Staff Attorney

October 4, 1988

The Hon. Sander M. Levin
U.S. House of Representatives
323 Cannon House Office Building
Washington, D.C. 20515

Re: H.R. 5250, "The Social Security Beneficiaries Protection Act of 1988".

Dear Representative Levin:

In response to your September 23, 1988 letter to Eileen Sweeney of the National Senior Citizens Law Center, requesting examples of real people who have been hurt by the Social Security Administration's procedures, I can think of no better examples than Kathleen Hamilton and Helen Louise Smith. Mrs. Hamilton is a person of limited means who had her entire check withheld because of an overpayment. Mrs. Smith is a person who reapplied, rather than appealed, following an adverse claim determination. Although both of my clients ultimately prevailed in U.S. District Court, following protracted litigation, it is apparent that your bill would have significantly reduced the hardships which they encountered along the way.

Kathleen Hamilton is a 60 year old widow, who has given birth to 9 children, 6 of whom have survived. She has a limited education, and lives in Wise, Virginia, a rural, mountainous portion of southwest Virginia in the Appalachian Mountains.

On September 2, 1971, Thomas Hamilton, the second husband of Kathleen Hamilton, applied for Disability Insurance Benefits. That same day, Mrs. Hamilton applied for Child's Insurance Benefits for their six minor children. Mr. Hamilton died September 26, 1971. Each child received Child's Insurance Benefits until such child turned 18 or graudated from High School. Teresa Hamilton, the fifth born child, graduated from High School in June, 1980 and turned 18 on September 29, 1980.

On December 19, 1983, SSA issued a Notice of Overpayment to Teresa that she had been overpaid $1,756.00 in Child's Insurance Benefits in 1980. No notice of overpayment ever was issued to Kathleen Hamilton, who has served as Teresa's Representative Payee. Teresa had total earnings from employment of $7,232.00 in 1980, which exceeded the annual earnings limit for 1980 of $3,720.00. Teresa had excess earnings of $3,512.00, and because benefits are reduced $1.00 for every $2.00 of excess earnings, benefits should have been reduced by $1,756.00.

Teresa made a timely request for waiver of overpayment on January 17, 1984, which was granted June 13, 1984. Kathleen Hamilton also made a timely request for waiver of overpayment, which was denied June 18, 1984. She requested reconsideration of her request for waiver of overpayment, which was denied August 17, 1984.

Thereupon SSA began recovering the overpayment by withholding all of Mrs. Hamilton's Mother's Insurance Benefits as follows:

September 1984	$296.00
October 1984	$296.00
November 1984	$296.00
December 1984	$296.00
January 1985	$296.00
February 1985	$276.00
TOTAL	$1,756.00

At the time of the recovery, Mrs. Hamilton's sole source of income for herself and her 15 year old son, Archie, consisted of Mrs. Hamilton's $296.00 Mother's Insurance Benefits, and her son's $296.00 Child's Insurance Benefits. Although the family income was cut in half, the family's expenses remained unchanged:

Rent	$100.00
Food	$300.00
Clothing	$ 30.00
Utilities	$ 57.00
Insurance	$ 20.00
Medical	$ 36.00
Automobile	$ 20.00
School supplies & miscellaneous	$ 40.00
TOTAL	$603.00

To try to make ends meet, Mrs. Hamilton started working three days a week cleaning a doctor's office, at about $15.00 per day, and then started working five days a week taking care of an old lady, again at $15.00 per day. Throughout the period of withholding, her expenses of $603.00 per month consistently exceeded her income, and had to rely upon charity from friends, neighbors and relatives. At no point did SSA offer or suggest a willingness to withhold less than 100% of Mrs. Hamitlon's Mother's Insurance Benefits.

Mrs. Hamilton appealed, had an ALJ hearing on December 5, 1984, and got a denial April 29, 1985, long after the overpayment had been recovered. The ALJ found Mrs. Hamilton not without fault in causing the overpayment, because she had failed to file by April 15, 1981 the annual earnings report of Teresa's 1980 earnings. On February 4, 1986, the Appeals Council vacated and remanded becasue the ALJ had applied the wrong regulations in determining the "without fault" issue.

A second ALJ hearing was had on April 24, 1986, and another denial issued on May 28, 1986, again finding Mrs. Hamilton to be at fault in causing the overpayment. The Appeals Council affirmed on February 17, 1987, and judicial review was sought in the United States District Court for the Western District of Virginia.

In federal court I argued that Mrs. Hamilton was without fault because, although she did not file the 1980 annual report, she did file a "student report" in May, 1980 in which it was clearly indicated that Teresa's 1980 earnings would exceed the annual earnings limit. Despite SSA's possession of information showing that Teresa's benefits should have been reduced, SSA continued to send Teresa's checks without any reduction and Mrs. Hamilton accepted and cashed those checks under the good faith belief that Teresa was entitled to them. On September 9, 1987, the U.S. District Court adopted this argument in its entirety, reversed SSA's decision finding Mrs. Hamilton at fault, and remanded to SSA for a determination as to whether the withholding had defeated the purposes of the Social Security Act (Court decision attached).

Following the third ALJ hearing on this matter, the Appeals Council on June 27, 1988 adopted the recommended favorable decision of the ALJ finding that the withholding had defeated the purposes of the Social Security Act (ALJ and Appeals Council decisions attached). Finally, in August, 1988, SSA released to Mrs. Hamilton the $1,756.00 which had been withheld almost four years earlier. Needless to say, the refund carried no interest, despite the fact that Mrs. Hamitlon had been illegally deprived of the use of this money for four years.

The essence of this case is that SSA had requested and obtained information which could have prevented the overpayment, yet made the overpayment anyway, and illegally withheld all of Mrs. Hamilton's Mother's Insurance Benefits to recover the overpayment. SSA's position was not even substantially justified, and I was awarded attorney's fees under the Equal Access to Justice Act (Court decision attached). Yet, although my legal services program will get $1,887.00 in attorney's fees, my client gets only the benefits which she rightfully should have received four years ago.

Helen Louise Smith is a 61 year old woman with a sixth grade education and no past relevant work history. She lives in Raven, Virginia, also a rural, mountainous area of southwest Virginia. She has an IQ of 65 and suffers from generalized anxiety disorder with motor tension and chronic psychoneurosis. She applied for Supplemental Security Income (SSI) without the assistance of a Representative on August 7, 1984, was denied on October 3, 1984, and did not appeal. Rather, she re-applied for SSI on August 27, 1985, obtained the assistance of a Representative on October 7, 1985, and won her SSI benefits through a favorable ALJ decision on December 11, 1986.

The ALJ found that she met the disability regulations for mental retardation as of the date of her second SSI application, August 27, 1985, but not before. Mrs. Smith's Representative asked the Appeals Council to re-open the first SSI application dated August 7, 1984, on the grounds of new evidence, because there was no IQ test obtained in connection with the first application. This was denied by the Appeals Council on April 23, 1987, and judicial review was sought in the United States District Court for the Western District of Virginia.

In federal court, I argued that this was not a "re-opening" case at all, but rather, a "redetermination" case arising under §5(c)(3) of the Disability Benefits Reform Act (DIBRA) of 1984, Pub. L. 98-460, 98 Stat. 1794 (10/9/84). In DIBRA, Congress expressly provided a remedy for persons such as Mrs. Smith, who had a mental impairment, who were denied disability benefits between March 1, 1981 and October 8, 1984, who did not appeal, and who re-applied for disability benefits between October 9, 1984 and October 8, 1985. The exact language of §5(c)(3) of

DIBRA reads:

> (3) Any individual with a mental impairment who was found to be not disabled pursuant to an initial disability determination or a continuing eligibility review between March 1, 1981, and the date of the enactment of this Act, and who reapplies for benefits under title II or XVI of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication.

I also cited to the federal court the language of Section 4 of the Conference Report to accompany the Disability Benefits Reform Act of 1984, H.R. Rep. No. 98-1039, 98th Cong., 2nd Sess. (9/10/84), the pertinent portion of which reads as follows:

> Mentally impaired persons who received an unfavorable initial or continuing eligibility determination between March 1, 1981 and enactment of the bill and who reapplied for benefits within 12 months of enactment would be deemed to have reapplied at the time of the unfavorable determination for the purpose of establishing a period of disability during the period covered by the prior determination, but not for benefit purposes; benefits would be payable only for the twelve months prior to the date of the new application. The provisions also apply to title XVI.

Despite the clear legislative history and statutory language, SSA opposed the case in federal court, argued that this was a "reopening" case, and contended that because the federal court did not have jurisdiction to review a failure to re-open, the case had to be dismissed. The U.S. District Court rejected SSA's argument in its entirety, and found that Congress had provided for an automatic redetermination in situations such as

Mrs. Smith's, where an earlier application based on mental disability had been denied between March 1, 1981 and October 8, 1984, and a later application had been filed between October 9, 1984 and October 8, 1985 (Court decision attached). Accordingly, the court remanded on April 7, 1988 for that automatic redetermination.

Following remand, the ALJ and the Appeals Council found that, based upon the evidence of record, Mrs. Smith met the disability regulations for mental retardation on August 7, 1984, the date of her first application, and was entitled to benefits from August, 1984 through the present (ALJ and Appeals Council decisions attached).

The essence of this case is that SSA failed to pay any attention whatever to the provisions of §5(c)(3) of DIBRA until a federal court told them to do so. SSA did not even have a plausible argument (or any argument) that §5(c)(3) did not apply; SSA simply ignored the law and pretended that the will of Congress did not exist. When finally confronted with the law, and the obvious fact that Mrs. Smith was just as mentally retarded in 1984 as she was in 1985, SSA grudgingly granted the additional year's benefits. My application for attorney's fees under EAJA is pending.

What is most galling about these examples is not that SSA overlooked pertinent facts and material law, is not that SSA defended the indefensible in federal court, and is not that I invested 23 hours of my time in *each* of these cases in *just* the federal court proceedings alone. It is rather that my clients, poor and disadvantaged, must wait years for benefits which are rightly theirs. If your bill alleviates even a fraction of their misery, it will be well worth it.

Respectfully,

Martin Wegbreit
Senior Staff Attorney

MW/jbv

Enclosures

cc: Eileen Sweeny
National Senior Citizens Law Center
(w/ enclosures)

LEGAL AID SOCIETY OF MARIN COUNTY

30 North San Pedro Road, Suite 245
San Rafael, CA 94903
(415) 492-0230

Senior Legal Services Unit
(415) 492-0920

Volunteer Legal Services Unit
(415) 492-0230

October 4, 1988

Congressperson Sander M. Levin
U.S. House of Representatives
Washington, D.C. 20515

Re: H.R. 5250, "The Social Security Beneficiaries Protection Act of 1988"

Dear Congressperson Levin:

I am writing in response to your September 23, 1988 letter requesting my comments on the Social Security Beneficiaries Protection Act of 1988 ("Act").

In cooperation with the National Senior Citizens Law Center, I recently surveyed forty legal services lawyers and paralegals from throughout the United States who do substantial work in the area of Social Security. The survey asked about many of the issues that the proposed Act addresses. Carole Schumacher of Legal Assistance of North Dakota's September 29, 1988 letter to Elaine Fultz of the Subcommittee on Social Security sets out some of the survey's statistical findings. (A copy of Ms. Schumacher's letter is enclosed.) Below are some of the comments made in response to the survey that are relevant to the Act:

(1) Many people of limited means have had all or most of their Social Security Title II check withheld because of an overpayment. Those surveyed indicated that this withholding is "devastating" to clients. One person stated that this had happened to a client with SSA providing no information about waiver. Almost half of the legal workers surveyed said that one or more of their clients had had their entire Title II check withheld to recover an overpayment even though the person was poor enough to be on SSI.

(2) There are many problems because of a lack of records from telephone contacts with SSA. Sixty-eight percent of the legal workers surveyed responded that their clients had problems caused by SSA giving them incorrect information. One person noted that he used the "misinformation defense" to overpayments frequently and successfully at the administrative hearing level because it is a well-acknowledged fact that misinformation is rampant. Common areas of misinformation included being told to reapply

rather than appeal and being given inaccurate information about work rules, SSI resource rules, and overpayment and waiver issues. Several legal workers suggested that SSA employees on the telephone should be required to identify themselves and should provide written follow-up to the client's inquiries. There was a sense that if SSA employees had to identify themselves they would be more motivated to give correct information, or at least a client could document that he or she received incorrect information. Other complaints about the 800 telephone numbers include that many clients do not have telephones, that these lines are often busy for long periods of time, that reliance on the telephone is not appropriate for clients with hearing deficits or translation needs and that there is inadequate communication between the people who staff the 800 telephone numbers and the people in the local district offices.

(3) Hard to understand notices is an extremely widespread problem. This problem was the most commonly found of the issues addressed in the survey. Many legal workers complained that they often had to request reconsideration or a hearing just to figure out what the problem was, a very inefficient use of everyone's resources. There were several complaints that notices denying benefits do not advise clients that their interests are generally better protected if they appeal rather than re-apply. Overpayment notices were considered the worst. People complained about standard paragraphs being patched together in a way that did not make sense and about the lack of a detailed explanation of the cause of the alleged overpayment. One example given was of an SSI notice telling a person she was denied SSI for having "excess resources," but providing no explanation of which resource(s) allegedly put the client over the limit. (Enclosed, as Exhibit A, is an example of a similar notice sent to one of my clients.) Without such information, it was impossible for the client to assess whether SSA's decision was correct. Because the notice did not include the name, address, and telephone number of the person responsible for the decision, the client was forced to appeal just to find out the reasons for SSA's action. Perhaps in addition to requiring SSA notices to be written in "simple and clear language," the Act should require the notices to contain "detailed and clear explanations of the reasons" for the SSA action described in the notice.

(4) Too often SSA does not assist clients to appeal rather than reapply for benefits. Many people complained that

notices do not advise clients about the consequences of reapplying instead of appealing an adverse decision.

The following are some examples of the problems that my clients at the Legal Aid Society of Marin County have experienced:

Mr. B's case is an example of SSA refusing to consider a disabled person's limitations in assessing fault. Mr. B receives SSI disability benefits because he is mentally retarded. He spent most of his life institutionalized in a mental hospital and is unable to read or write. Recently, SSA charged Mr. B with an overpayment. Mr. B had gotten a job washing pots and, although Mr. B immediately reported to SSA that he was working and how much he was earning, SSA failed timely to process Mr. B's earnings report and overpaid him. On Mr. B's behalf, I asked SSA to waive the overpayment because Mr. B was not at fault.

Exhibit B is the notice of reconsideration SSA sent to Mr. B last week. In that notice, SSA accuses Mr. B of failing to fulfill his reporting responsibilities. This is an error because it was SSA that failed timely to process Mr. B's earnings report. Even if Mr. B had failed to report his earnings, the notice makes clear that SSA would not take into account his mental and linguistic limitations. SSA was well aware of Mr. B's disabilities because I had presented it with a report from a clinical psychologist who had tested Mr. B and concluded that "his perceptual-spacial reasoning abilities are limited to one-step operations that can be learned through rote and repetition, coupled with intense direct supervision." SSA's notice acknowledges that it is aware that Mr. B has "a hard time understanding things and [is] unable to read," but then states that because Mr. B had similar overpayments in the past, SSA presumes Mr. B has enough knowledge of the SSI reporting responsibilities. This presumption is particularly inappropriate in that the nature of Mr. B's disability includes great difficulty with learning.

As an aside, yet another error the SSA district office made in this case was that although the request for reconsideration of waiver of the overpayment was timely filed, the SSA office illegally began reducing Mr. B's benefits to recoup the overpayment before Mr. B had an opportunity to be heard at an informal conference and before SSA issued a reconsideration decision.

Exhibit C consists of examples of some of the SSA notices another client of mine received. These notices are extremely confusing and fail to contain the name and telephone number of a responsible person to contact. Our office handles hundreds of Social Security cases each year. The notices in Exhibit C are typical of the poor quality of information SSA gives to the public.

If you or any member of your staff would like any additional information, please do not hesitate to contact me.

Sincerely yours,

SENIOR LEGAL SERVICES

Amy J. Hertz

Amy J. Hertz
Senior Attorney

OCT 3 REC'D

Neighborhood Legal Services, Inc.
31 EXCHANGE STREET
LYNN, MASSACHUSETTS 01901
(617) 599-7730
TDD 599-5042

September 29, 1988

Sander M. Levin
United State Representative
323 Cannon House Office Building
Washington, D.C. 20515

Re: HR 5250

Dear Representative Levin:

I am writing in response to your request for case examples of people who have received hard to understand notices from the Social Security Administration.

The attached example is a notice that was sent to a client who can only speak and read in Spanish. She had requested that all notices be sent to her in that language. Additionally, even when translated, the notice was confusing. It did not clearly state what it had intended; that her benefits were not going to change. The first opening line states that her benefits will change; the second paragraph explains that they won't, and the rest of the letter explains her appeal rights.

I hope this example is helpful.

Sincerely,

/Jacqueline Rodriguez
Paralegal to
Michael Raabe, Attorney

JR/mlm
CC: Eileen Sweeney

Social Security Administration
Supplemental Security Income
Important Information

034

Date: September 21, 1988

Claim Number: [redacted]

[redacted]
PO BOX 1554
LYNN MA 01901

* Type of Payment *
Individual--Disabled

We are writing to tell you about changes in your Supplemental Security Income record. The rest of this letter will tell you more about this change.

INFORMATION ABOUT YOUR PAYMENTS

This action does not change your current payment amount.

YOUR PAYMENT IS BASED ON THESE FACTS

You have no income for September 1988 on.

DO YOU THINK WE'RE WRONG?

If you think we're wrong, you have the right to appeal. We'll correct mistakes. We'll look at any new facts you have.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you get this letter.
- You'll have to have a good reason for waiting more than 60 days.
- To appeal, you must fill out a form called "Request for Reconsideration." The form number is SSA-561. To get this form, contact one of our offices. We'll help you fill out the form.

HOW TO APPEAL

There are two ways to appeal. You can pick the one you want. If you meet with us in person, it may help us decide your case.

- Case Review. You have a right to review the facts in your file. You can give us more facts to add to your file. Then we'll decide your case again. You won't meet with the person who decides your case. This is the only kind of appeal you can have to appeal a medical decision.

SSA-L8166

$464.39

- Informal Conference. You'll meet with the person who decides your case. You can tell that person why you think you're right. You can give us more facts to help prove you're right. You can bring other people to help explain your case.

IF YOU WANT HELP WITH YOUR APPEAL

You may want help from a friend, lawyer or someone else. There are groups that can find you a lawyer. Some can give you a free lawyer. We can give you the names of these groups.

IF YOU HAVE ANY QUESTIONS

If you have any questions, you may call us at area code (617) 581-7460. We can answer most questions over the phone. You may also write or visit any Social Security office. The office that serves your area is located at:

140 UNION STREET
LYNN MA
01901

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.

H. R. Doggette Jr.

Herbert R. Doggette, Jr.
Deputy Commissioner,
Operations

Neighborhood Legal Services, Inc.
31 EXCHANGE STREET
LYNN, MASSACHUSETTS 01901
(617) 599-7730
TDD 599-5042

AUTHORIZATION TO FURNISH CONFIDENTIAL INFORMATION

I hereby authorize NEIGHBORHOOD LEGAL SERVICES
to disclose and furnish any and all information and records
relative to MY BENEFITS
acquired in the course of WHENEVER
during the period of "
to ~~[illegible]~~ Sander M. Levin, U.S. Representative
~~[illegible]~~
or to any of the other staff of Neighborhood Legal Services.

[redacted]
Principal.

Witness:

Dated: 9/21/88

OCT 3 REC'D

HALL & JONETH, P.C.
ATTORNEYS AT LAW
SUITE 100, 601 OBERLIN ROAD
RALEIGH, NORTH CAROLINA

CHARLES T. HALL
ROBERT A. JONETH

REPLY TO:
POST OFFICE BOX 12405
RALEIGH, N.C. 27605

919-833-0693
800-662-8702

BRANCH OFFICES:
SUITE 811
WACHOVIA BUILDING
225 GREEN STREET
FAYETTEVILLE, N.C.

ROOM 207
FIRST AMERICAN SAVINGS
BANK BUILDING
ASH AND SPENCE STREETS
GOLDSBORO, N.C.

September 29, 1988

The Honorable Sander M. Levin
United States House of Representatives
Washington, D.C. 20515

Re: H.R. 5250 "The Social Security Beneficiaries Protection Act of 1988"

Dear Mr. Levin:

I was delighted to hear that you had introduced H.R. 5250, the "Social Security Beneficiaries Protection Act of 1988." As an attorney who limits his practice to representing Social Security claimants, I can tell you that this bill is sorely needed.

My understanding is that at a hearing held on September 22, 1988 representatives of the Social Security Administration denied that there were any serious problems in providing service to Social Security claimants. I am sure that the people who testified for Social Security could not possibly have had any recent experience in the District Offices. To put it mildly, the District Offices are in bad shape. Service in Social Security as a whole is getting worse and worse. Let me give you some specifics:

1. People who go to a Social Security District Office in this area to file a new claim for benefits are routinely being told that they cannot be seen without an appointment. When they ask for an appointment they are given a date and a time at which some Social Security employee will call them in the future to take their application over the telephone. It is virtually impossible now to get District Office personnel to take a claim in person. This is happening even with claimants who are elderly, infirm, mentally retarded, or severely mentally ill. Inevitably, many of these claimants are unable to remember to even be by the telephone at the proper time. Even if Social Security gets through to them, the claimants have to wait until

they receive a claim form in the mail, sign it at the appropriate places, and mail it back to Social Security. For an illiterate, mentally retarded, very elderly, or mentally ill claimant the odds are extremely high that the claim will never even be filed. One of the most serious problems is that there is a huge delay between appearing at the Social Security Office to ask to file a claim and the date upon which Social Security telephones the claimant to take the claim over the telephone. In Fayetteville, North Carolina, claimants who appear at the Social Security District Office to file a new claim are told that Social Security will not be able to call them back until five to six weeks later. In other offices in this area it is taking two to three weeks following a request to file a claim before Social Security actually takes the claim, that is, if the claimant can manage to be by the telephone at the appropriate time and then returns the forms. At best, this adds a good deal of delay to the process. At worse, it prevents many claimants from ever filing claims.

2. The notices which Social Security send out routinely are so confusing that no one can understand them. I used to work for Social Security. I have been representing Social Security claimants for more than nine years. Every week I receive award notices from Social Security that I cannot understand. Pity the poor uneducated claimant. Enclosed is a very modest example of one of these confusing award certificates. I have labeled it "A." As you can see the claimant is being sent a check for $17,244.40. Even though the amount of money is quite large the award certificate gives no information about how it was computed. The award certificate does not state the monthly benefits for each of the months involved. It does not tell us whether Medicare premiums were withheld. In one sentence it states that "You will receive $711.00 each month." However, in the next sentence it states that "We reduced the monthly benefit amount to $706.70 beginning January 1987 because we could pay you for more months after age 65 than we previously used when we figured your benefit." I have no idea what this means. I also have no idea why the total being paid my client plus the total being withheld for my attorney fee come to $22,743.50. Where does the fifty cents come in? My understanding was that Social Security benefits were rounded down to the next lower dollar. How can a claimant be entitled to fifty cents? Moreover, if you total the amount withheld for the attorney fee plus the amount being paid the claimant and divide it by four you come up with $5,685.88, but the amount being withheld for attorney fees, which is supposedly one-quarter of the back benefits, is $5,499.10. What is the explanation for the difference between the two?

3. I have seen many examples of errors made by Social Security in alleged overpayments. Often the alleged overpayments

do not exist. Virtually always the amount that Social Security alleges to be overpaid changes each time one appeals. It is very clear-cut that if a claimant does appeal an alleged overpayment, asserting that there is no overpayment, that Social Security is not supposed to begin withholding the overpayment until all appeals on the overpayment are completed. I enclose some correspondence between myself and Paul Barnes, Director of the Southeastern Program Service Center, labeled "B" and C" about a case I had in which Social Security began withholding the entire overpayment while we were still appealing, asserting that there was no overpayment. The letter from Mr. Barnes says this was a mistake and that they would correct it. This is in January and February 1988. However, I attach another notice from Social Security in a different case dated August 30, 1988, labeled "D." We had filed a request for hearing on this case in June 1988, asserting that there was no overpayment. Despite this the Southeastern Program Service Center sent out a notice on August 30, 1988 that "Beginning with the check you would normally receive about October 3, 1988, we will withhold your full benefit to recover your overpayment of $5,674.00. When we have completely recovered your overpayment we will resume your benefit payments." This is a huge overpayment. Without getting into the facts of the case I can tell you that we have very good reason to believe that the ultimate outcome will be a finding that there was no overpayment. Even if there was an overpayment, no one could assert that this claimant was at fault.

4. The general rule in dealing with Social Security is that you had better get everything in writing, because Social Security seldom keeps records of conversations, whether in person or over the telephone. I have never understood why Social Security permits its employees to talk freely with claimants and tell them all sorts of things without requiring written confirmation. Surely, District Office personnel should be required to write down at least brief notes concerning all conversations with claimants and these notes should be routinely placed in the claimants' files, rather than kept in the District Offices and destroyed after a brief period of time. By this point I have no problem with this since I make sure that virtually all my dealings with Social Security are documented in writing, but I have seen all sorts of injustices occurring as a result of the lack of written records about conversations of unrepresented claimants.

5. Virtually all Social Security disability claimants whose claims are denied should appeal. Most do not. Many of those who do not appeal later file new claims and pursue their right to a hearing, but lose benefits as a result of not having pursued their cases previously. Of course, many of these people have no

one to blame but themselves, but a significant number of these people have been misled by notices which they received from Social Security which encouraged them to wait and file a new claim, rather than filing an appeal. I am sure that you have seen examples of these documents and I will not burden the record further with copies of these notices. Suffice it to say that in perhaps half the cases in which I represent Social Security claimants before Administrative Law Judges I am trying to get the Administrative Law Judge to reopen a prior claim and base benefit payments on the prior claim. Sometimes I cannot do this because too much time has passed. Sometimes I am unable to convince the Administrative Law Judge to reopen a prior claim. It would certainly benefit everyone to encourage claimants further to pursue their appeal rights at the beginning, rather than filing multiple new claims and not appealing them.

Thank you again for introducing this fine bill. I support it and hope that it sees passage.

Sincerely yours,

Charles T. Hall

CTH:lj

Enclosures

SOCIAL SECURITY ADMINISTRATION

Southeastern Program Service Center
Birmingham, Alabama 35285

A

Date: September 14, 1988

Claim Number: 240-12-6533-A

Durham, NC 27705

We are writing to give you new information about Social Security benefits on this record.

We can pay you again beginning January 1986.

- You will soon receive a check for $17,244.40, which is the money you are due through August 1988.
- After that, you will receive $711.00 each month.

We reduced the monthly benefit amount to $706.70 beginning January 1987 because we could pay you for more months after age 65 than we previously used when we figured your benefit.

We raised the monthly benefit amount to $736.30 beginning December 1987 because the cost of living increased.

Your lawyer may ask the court to approve a fee no larger than 25 percent of past due benefits. Past due benefits are those payable through January 1988, the month before the court's decision. For this reason, we are holding back $5,499.10.

After the court sets the fee, we will let you and the lawyer know how much of this money will be used to pay the fee. We will send any remainder to you.

You are entitled to benefits because of a decision made by the Administrative Law Judge.

We already told you about your right to appeal the decision made by the Administrative Law Judge. If you feel any action we are taking to carry out the decision is wrong, you also have the right to appeal that part of your case.

RECEIVED
SEP 15 1988
HALL & JONETH, P.C

SEE NEXT PAGE

- You have 60 days to ask for an appeal.
- The 60 days start the day after you get this letter.
- You will have to have a good reason for waiting more than 60 days to ask for an appeal.

We are sending a copy of this letter to your attorney.

If you think we are wrong, you have the right to appeal. We will correct mistakes. We will take a look at any new facts you have. Then a person who did not make the first decision will decide your case again.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you get this letter.
- You will have to have a good reason for waiting more than 60 days to ask for an appeal.

If you have any questions, you should call, write or visit any Social Security office. If you visit an office, please bring this letter. It will help us answer your questions.

Paul D. Barnes
Director
Program Service Center

✓ cc: Charles T. Hall
Attorney at Law
P.O. Box 12405
Raleigh, NC 27605

David P. Tennant
Administrative Law Judge
301 Hillsborough Street
Third Floor
Raleigh, NC 27603

Social Security Administration
District Office (328)
Durham, NC

mo5/f06/ds

CHARLES T. HALL, P. C.
ATTORNEY AT LAW
POST OFFICE BOX 12405
RALEIGH, NORTH CAROLINA 27605

SUITE 100
801 OBERLIN ROAD
RALEIGH, N.C.
919-833-0693
1-800-662-8702

SUITE 811
WACHOVIA BUILDING
225 GREEN STREET
FAYETTEVILLE, N.C.
1-800-662-8702

B

January 15, 1988

Director
Southeastern Program Service Center
2001 Twelfth Avenue North
Birmingham, Alabama 35285

Re:
Social Security # 241-40-0713

Dear Sir:

On August 12, 1987 you sent my client, , a notice that she had been overpaid by either $805.20 or $807.00. Mrs. then requested reconsideration, on the grounds that she had not been overpaid at all. A reconsideration determination was issued on October 16, 1987 again holding that Mrs. had been overpaid. Mrs. filed a Request for Hearing on the issue in early November 1987.

Despite Mrs. ongoing protests that there was no overpayment you began to withhold all of her Social Security checks, apparently beginning with the check for October 1987. This is flatly illegal as all members of your staff should well know.

I became involved in the case in early December. I sent a letter to the District Office on December 8 protesting the withholding of Mrs. s benefits. I received a response from the District Office dated December 16, 1987 indicating that your office had been advised of the problem and that corrective action would be taken.

Despite this promise Mrs. has now received her Social Security check for December in the total of $5.00. I have contacted the District Office which informs me that your office continued to withhold payment to make up the overpayment and that $5.00 was all that was left after the entire overpayment was made up.

I have seen too many cases like this to believe that what happened here was an aberration. I have come to the conclusion that your office is deliberately ignoring the law and is recovering overpayments while there are ongoing appeals concerning the overpayment.

In this case I demand that you immediately pay all of the money which you have wrongly withheld from her benefits.

I want to advise you that since I have come to the conclusion that your office is not acting in good faith in these cases that it is my intention the next time you do this to not waste my time dealing with your office. I am immediately going to file a civil action and force you to explain why you are ignoring a longstanding Supreme Court decision on this issue.

Yours truly,

Charles T. Hall

CTH:lj

cc: Mrs. Rebecca R. Floyd

Mr. Donald Gonya
General Counsel
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21203

DEPARTMENT OF HEALTH & HUMAN SERVICES **Social Security Administration**

Refer to:
S2P-F43911

Southeastern
Program Service Center
2001 Twelfth Avenue North
Birmingham AL 35285

February 16, 1988

C

Mr. Charles T. Hall
Attorney-at-Law
P. O. Box 12405
Raleigh, NC 27605

Dear Mr. Hall:

Re: , SS No. 241-40-0713-A

Benefits totaling $807.00 were withheld from benefits due Mrs. for October through December 1987. Since we are required to give 30 days advance notice after a reconsideration determination before beginning any withholding action to recover an overpayment, the withholding of the check for October 1987, which was due on November 3, 1987, was in error.

A check for $807.00 was certified to the Treasury Department on February 12, 1988, to pay benefits due for October, November, and December 1987. This check should be received within a few days. Payment of her full monthly check for $274.00 was resumed effective January 1988, with the check due around February 3, 1988.

Mrs. file is being forwarded to the Office of Hearings and Appeals for a review of the administrative law judge's decision of January 29, 1988. No further adjustments will be made on Mrs. record until a final decision is received concerning her earnings record. In the meantime, she will continue to receive her regular monthly check shortly after the end of each month.

Sincerely,

Paul D Barnes
Paul D. Barnes
Director
Southeastern Program Service Center

FEB 18 1988
CHARLES T. HALL P.C

Social Security Administration
Retirement, Survivors, and Disability Insurance
Notice of Change in Benefits

This is a Copy of
Letter I Recieved from
SocSec on Frida.

Southeastern Program Service Center
2001 Twelfth Avenue North
Birmingham, Alabama 35285
Date: August 30, 1988
Claim Number: 238-32-4231 HA

D

FAYETTEVILLE NC 28301

We are writing to give you new information about Social Security benefits on this record.

Beginning with the check you would normally receive about October 3, 1988, we will withhold your full benefit to recover your overpayment of $5,674.00. When we have completely recovered your overpayment we will resume your benefit payments.

- The next check you receive will be for $8.00, which is the money you are due through November 1993.
- After that you will receive $16.00 each month.

If you think we are wrong, you have the right to appeal. We will correct mistakes. We will look at any new facts you have. Then a person who did not make the first decision will decide your case again.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you get this letter.
- You will have to have a good reason for waiting more than 60 days to ask for an appeal.

If you have any questions, you should call, write or visit any Social Security office. If you visit an office, please bring this letter. It will help us answer your questions.

RECEIVED
SEP. 7 1988
HALL & JONETH P. C.

Paul D. Barnes
Paul D. Barnes
Director
Program Service Center

LAW OFFICES
LEGAL SERVICES OF EASTERN MICHIGAN

---

140 East Main Street
Midland, Michigan 48640

Telephone (517) 832-7987
Toll-Free 1-800-322-9142

September 30, 1988

Honorable Sander Levin
323 Cannon House Office Building
Washington, D.C. 20515

Dear Rep. Levin:

Recently you expressed an interest in receiving examples of people who had been hurt by the Social Security Administration's procedures. Enclosed please find summaries of three cases with attached supporting documents.

I. MRS. D.

Mrs. D. was allegedly overpaid wife's benefits in 1973 and 1974. Waiver of recovery was denied in 1977. She then had a personal conference, during which she said she had never received the checks in question and asked to see photocopies. Social Security could not produce them.

Mrs. D. heard nothing more from Social Security for 10 years until 1987, when they wrote and reminded her that "recently" she had been notified of an overpayment. Social Security intends to recoup by withholding from current benefits. The Administration admits it can produce no copies of the checks in question. Mrs. D. is now 64 and has only a hazy memory of the precise events in 1973, 1974, and 1977 regarding the alleged overpayment.

II. MRS. S.

Mrs. S. experienced months of frustration trying to file an SSI application to be considered along with a Title II application based on disability for which a hearing had already been requested.

The District Office would not let her apply for SSI, did not return telephone calls, and eventually lost her file and all records of correspondence and telephone contacts that both our office and the claimant had had with the District Office.

The attached letter documents the problems we had with the District Office and lists the items which they recently lost and requested.

III. MRS. B.

Mrs. B.'s husband died in October, 1984. She reported his death to SSA and began receiving widow's benefits in November, 1984. In September, 1985, Social Security made a direct deposit of $2664 into Mrs. B.'s bank account. In June, 1987, Mrs. B. received a letter from Social Security saying she had been overpaid $2372. They had already withheld $85.

In one letter Social Security told her she had received widow's benefits from January - September 1984 of $273 per month. Another letter said the widow's benefits were $578 per month for this period. The June, 1987 notice said she had received widow's benefits from January, 1984 through September, 1984. This was incorrect -- her widow's benefits did not begin until November 1984 and the incorrectly issued check was not sent until September 1985.

The Administration's letters to Mrs. B. were so confusing and contradictory that even the SSA supervisor conducting the personal conference in September 1988 did not understand the issue. From her reading of the documents in the file, she thought Mrs. B. had received widow's benefits for eight months before her husband died rather than had received one check a year after his death. SSA is still unable at this time to determine why the check was for $2664. The Administration proposes to reduce her monthly benefit to $127, from $607.

Each of these senior citizens has been hurt by the system. I hope these examples will provide support for H.R. 5250, "The Social Security Beneficiaries Protection Act of 1988.."

Sincerely,

LEGAL SERVICES OF EASTERN MICHIGAN

Leslie V. Armentrout

LESLIE V. ARMENTROUT
Paralegal

lm

Enclosure

COUNTY BOARD
Atty. Lawrence C. Patrick, Jr.
Mrs. Charles F. Whitten
Ms. Sally Repeck

STATE OF MICHIGAN

JAMES J. BLANCHARD, Governor
DEPARTMENT OF SOCIAL SERVICES
C. PATRICK BABCOCK, Director

WAYNE COUNTY
DEPARTMENT OF SOCIAL SERVICES
1200 Sixth Street
Detroit, Michigan 48226
Suite 356

September 15, 1988

Honorable Sander M. Levin
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Levin:

I am writing to express my interest and support for your upcoming subcommittee Hearings dealing with the Social Security Administration. I am a Client Advocate employed by the Michigan Department of Social Services to represent indigent claimants at Social Security Administrative Hearings.

I am very concerned about the current lack of accountability in dealing with the Teleservice Centers and support your proposal to issue receipts to claimants to confirm these telephone transactions. On more than one occasion, infirm claimants who have been referred to the Teleservice Center have repeatedly been unable to get their calls through, experienced prolonged delays in actually receiving service, or worse, been told by personnel at Social Security that there is no record of the telephoned request and that they must reinitiate the process, thereby forfeiting an earlier date of entitlement.

I believe that the communications issued by the Social Security Administration are very difficult for the average claimant to uderstand. I have heard this complaint often from my clients. Frequently, failure to cooperate is in fact failure to understand. I believe that the Secretary has an obligation to communicate in terms understandable to claimants, including those who are not represented and thus have no recourse for a more intelligible explanation.

I propose now to detail a particular case which I believe graphically demonstrates Social Security's disregard of the appointed representative. The Department of Health and Human Services specifically acknowledges its responsibility to relate to the appointed representative. The appointment of Representative form (SSA-169 - U4 (11-84) states:

> "We will deal directly with your representative on all matters that affect your claim. Occasionally, with the permission of your representative, we may deal directly with you on specific issues. We will rely on your representative to keep you informed on the status of your claim, ..."

On November 25, 1987, my services were requested on behalf of a 39 year old man with AIDS and concurrent renal failure necesitating hemodialysis. I met with him at Henry Ford Hospital in Detroit on December 8, 1987. He was receiving a dialysis treatment at the time of my interview and hospital staff required that I observe strict isolation proceedures. He signed an Appointment of Representative form designating me as his representative. He also signed an Agreement to Reimburse authorizing the Department of Health and Human Services to reimburse the State of Michigan for interim assistance received. I was unable to have him sign an application for SSI because my previous and subsequent requests for a supply of these applications were denied by the McNamara Social Security district office. I also obtained a letter from the physician on duty in the Nephrology Unit confirming the diagnoses of AIDS and end stage renal disease and the current necessity for dialysis.

I personally delivered the above-referenced documents to the McNamara district office on December 9, 1987. I was told that I was not authorized to sign the application for the claimant, but Social Security agreed to obtain all additional requisite material. It was my understanding that my contact with the district office and my request for services on behalf of the claimant constituted a protective filing date for Title XVI benefits.

I waited to receive further notice from the district office detailing their disposition of this case involving an individual who was presumtively eligible for benefits based either on his need for chronic dialysis, or his confirmed diagnosis of AIDS, or his terminal prognosis.

I learned from the hospital in May of 1988 that the claimant died in February of 1988. I contacted the Social Security district office on May 2, 1988 to inquire about the disposition of the case because of the State's vested interest in receiving reimbursement for interim assistance. I was informed by Social Security that there was no case because they had mailed applications to the claimant for his signature on three separate occasions, and had received no response from him. I asked why I had never been contacted or sent a copy of their notice to the claimant. If Social Security staff was unwilling or unable to go to the hospital to have the claimant sign the necessary forms, I believe that I should have been given the opportunity to do so, or been given the opportunity to petition the courts for guardianship in the event that the claimant may have been too incapacitated to act on his own behalf. I am attaching copies of relevant documents in this matter that is now pending before an Administrative Law Judge. I believe that it represents Social Security at its worst in blatantly ingoring the needs of its claimants and disregarding the role of the representative.

My co-workers and I represent a high precentage of mentally incapacitated claimants. Even when we have presented the local Social Security offices with medical and social documents confirming the claimant's mental incapacity, we have routinely not been sent copies of notices which are instead sent directly and solely to the claimant; this despite the fact that Appointment of Representative forms were duly filed with the appropriate district office. Again here, the claimant's "failure to cooperate" may in truth be failure to understand.

I strongly support your current efforts to improve the Social Security System and make it more responsive and sensitive to the claimants. I welcome the opportunity to provide any future assistance you may request.

Yours truly,

Marcia Dickman

Marcia E. Dickman
Client Advocate
(313)256-1833

LAW OFFICES
CHERKINSKY & TOLIN
ATTORNEYS AND COUNSELORS
TOWER 14, SUITE 920
21700 NORTHWESTERN HIGHWAY
SOUTHFIELD, MICHIGAN 48075-4964
(313) 552-9181

EDWARD J. CHERKINSKY
RICHARD D. TOLIN
PHILIP R. GOUTMAN
MICHAEL SKLADD

OF COUNSEL
SANFORD N. LAKIN

September 20, 1988

Congressman Sander Levin
323 Canon House Office Bldg.
Washington, D.C. 20515

RE: John Snyder
DO NOT OPEN IN MAILROOM

RE: Social Security Procedural Changes

Dear Sandy:

I am a constituent living and practicing in your district, and I understand that you are working on a bill to make certain procedural changes in the way attorney representatives are handled in Social Security Disability claims. I am writing to let you know how serious the situation has become, and how urgently certain changes are needed.

I have been representing large numbers of disability claimants since 1982. Back then, if you will recall, the Reagan administration in one of its most poorly managed and heartless actions, acted to review and terminate the benefits of many Social Security Disability benefit recipients. I began to receive telephone calls from such people, in varying stages of their review. Sometimes, the Office of Hearings and Appeals of the Social Security Administration would notify these people that their hearing was coming up, and that they should consider retaining counsel. Certain of those claimants would call me and I would develop medical information and attend the hearing. However, most claimants would contact me at earlier stages of the review. Some would call immediately upon notice that their checks were being stopped, while others would call after they were unsuccessful in the early stages of trying to get their benefits back. Remember that at that time, during the early cutoffs, there was no provision to allow these people to continue to receive their benefits pending the outcome of the review.

At the same time, I would receive a normal number of clients who were trying to obtain their disability benefits for the first time. They would also call upon me at various stages of their application.

It was a simple matter for me to become involved back then. I simply asked the claimant what Social Security office they were dealing with, and I sent an executed Administration form titled "Appointment of Representative."

This virtually always resulted, at that time, in my being placed "in the loop," wherein I would most certainly receive notice of all actions by the Administration. Once, however, a client trusted me to appeal her Notice of Reconsideration when I received it. She did not call me when she received hers. After all, when she received her initial denial, I did take care of that appeal. Unfortunately, I was not notified, and the Request for Hearing before an ALJ arrived late. The ALJ held a hearing on the issue of whether the Request for Hearing should have been considered timely filed. His finding put a grotesque twist on the idea of due process. He found that the claimant was not entitled to a hearing, since she admitted having been notified. He further found that I had not been notified, thus doing his so-called brother counsel the favor of protecting me from any claim of malpractice. Well, this particular claimant became disgusted and did not pursue the matter further, to my knowledge.

I understand the above circumstances to have occurred due to an error at the District Office level. A busy clerk simply failed to copy me in on a notice. The result was, to me, tragic.

As the years went by, the victims of Reagan's cutoffs dwindled, and most of them as we know were placed back on disability. Indeed, my Social Security practice is smaller at this time than it was during those busy times. But the problems that I am having in being placed "in the loop" have grown tremendously. I must now resort to sending each piece of mail by certified mail, since in some District Offices, most of the mail is apparently usually "lost." Quite simply, when a claimant engages my services in an early stage of the application process, that is, prior to a Request for Hearing, I am now rarely if ever copied in on the Social Security Administration's actions. Of late, I have had to rely on my clients to notify me immediately when they receive information from Social Security, even though I have filed all of the appropriate forms, now by certified mail, with the appropriate offices. You can imagine my utter disgust when I was not notified of a denial of benefits to a client of mine who happens to be hopelessly insane. She called me to explain that those voices she had been hearing were interferring with her Social Security case again. I had to figure out for myself that this meant that she had been denied, and I was able to get her to bring in her papers.

These increasing problems cause great hardship upon claimants for disability, and great expense in the attorney having to more closely monitor, and more frequently correspond, with both the claimant and the District Office. It is a travesty to permit representation by counsel, and at the same time deny counsel the benefit of copies of correspondence between the Administration and the claimant.

Clearly, something needs to be done to correct this intolerable inequity. I am pleased that your good offices are willing to address this serious problem. I understanding that you are trying to require the Administration to immediately place attorney representatives' names and addresses in some master file, so that the process of notifying an attorney of the decisions of the Administration will be somehow more automatic, and less capable of interference by busy bureaucrats in the District Offices.

If I can be of any further assistance to you in regard to this or any other matters, please do not hesitate to call upon me. I appreciate the work you are doing in this regard.

Very truly yours,
CHERKINSKY & TOLIN

RICHARD D. TOLIN

RDT:cw

cc: Ms. Patty Coffman
c/o Senator Levin
Detroit Office

BENJAMIN L. CARDIN
3D DISTRICT, MARYLAND

COMMITTEE ON PUBLIC WORKS
AND TRANSPORTATION

COMMITTEE ON THE JUDICIARY

ASSISTANT MAJORITY WHIP

Congress of the United States
House of Representatives
Washington, DC 20515

REPLY TO
☐ 507 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4016

☑ 540 E. BELVEDERE AVENUE, SUITE 201
BALTIMORE, MD 21212
(301) 433-8886

☐ 754 FREDERICK ROAD
CATONSVILLE, MD 21228
(301) 788-2041

☐ 412 S. HIGHLAND AVENUE
BALTIMORE, MD 21224
(301) 563-9177

September 16, 1988

SEP 21 1988

The Honorable Sander M. Levin
323 Cannon House Office Bldg.
Washington, D.C. 20515

Dear Sandy:

I understand that you are holding a hearing on the Social Security Beneficiaries' Protection Act, HR 5250. The Social Security specialist on my staff has brought to my attention a number of cases involving difficulties constituents have had with the Social Security Administration.

In an effort to present a fair representation of the complaints of my constituents, I have enclosed copies of correspondence that should be helpful to you in presenting your testimony on Thursday, September 22, 1988.

I hope that the information is satisfactory and that you will be effective in helping to correct some of the difficulties people encounter with Social Security personnel, correspondence and regulations.

Sincerely,

Ben

Benjamin L. Cardin
Member of Congress

BLC:rc
Enclosure

November 10, 1987

Mr. & Mrs. Oscar Lastnic
4008 Glengyle Avenue
Baltimore, MD 21215

Day phone: 363-1111, ext. 2573
Home #: 358-7969

Congressman Benjamin Cardin
CONGRESS OF THE UNITED STATES
House of Representatives
Washington, DC 20515

ATTN: Belvedere Avenue

Dear Congressman Cardin:

I am writing to request your assistance in obtaining a refund from the Social Security Administration, of money my wife was required to pay unnecessarily.

In September of 1984, I accompanied by wife, Carola Lastnic, #218-66-2256, to the Social Security Office in Randallstown, Maryland. At that time, my wife was filing for social security disability benefits. I explained to the staff person that she did not need medical insurance coverage, as I was working and paying $36 per month, out of my salary, to have her covered under my employer's health insurance plan. I was told by the employee at the Administration that my wife MUST carry this medical insurance coverage. I accepted her interpretation.

In November of 1986, I had a conversation with one of my co-workers. This individual told me that my wife was paying for medical coverage unnecessarily and that I should go back to Social Security and have the medical insurance coverage stopped. In November of 1986, I went back to the Randallstown SSA office and re-explained my position, this time to another agency representative. I was again told that my wife MUST keep this coverage. I left again, accepting the explanation.

In September of 1987, I returned to the Randallstown SSA office. This time, I had received notification from SSA that they would be billing me for both medical insurance coverage and hospital insurance coverage, for my social security benefits. I returned to inquire as to how I could stop the government from billing me for medical insurance coverage, as I was still employed and I was still carrying my own health insurance coverage. After I explained my situation, the staff person had me sign a form which would prevent the SSA from requiring me to pay for medical insurance.

Since I was already there, I asked this new staff person about my wife's continued coverage under the Federal Medical Insurance. I was advised to bring her to the office, where she could sign the same form, stopping the monthly deduction, as I did. She signed the form in September of 1987 and the deduction stopped, effective 10-1-87.

I feel my wife paid for this unnecessary coverage, from September of 1984 to September of 1987, a period of three years. By my calculations, the SSA deducted over $600.00 when I had told them on two occasions that such medical insurance coverage was completely unnecessary.

Continued...

NOV 17 1987

TO: Congressman Cardin
FROM: Mr. Oscar Lastnic
Page #2

In September of 1987, I asked the government representative at the SSA how to proceed to recoup these three years of back payments. She could offer me no advice or assistance.

Therefore, I am requesting your assistance in helping me recover this money that has been unnecessarily deducted for these premiums.

If you should need additional information, I can be reached at work, at the day number given previously.

I appreciate any assistance you can offer.

Sincerely,

Oscar Lastnic
Oscar Lastnic

CLAIMANT: Carola Lastnic
Carola Lastnic

OL/ciw

213822
KB-2043

06 1988

Mary L Cook
5717 Rusk Ave
Baltimore, MD 21215

SSN 218-14-7431

March 29, 1988

Dear Congressman Cardin,

I am requesting your help concerning a problem with the Social Security Administration. My checks were stopped after November, 1987 and I'm still not getting my benefits. I've called Social Security several times, and keep getting different answers. No one can tell me when my checks will resume or what the problem is. Once I was advised that I didn't file an earnings estimate (which I never received), but the information was taken on the phone and I was told there wouldn't be a problem. Please see if you can

APR 11 1988

Sincerely,

7331 Oakland Mills Road #103
Columbia, MD 21046
5 November 1987

MR. BENJAMIN CARDIN, M.C.
540 East Belvedere Street
Suite 201
Baltimore, MD 21212

Dear Congressman Cardin,

Pursuant to our meeting in your Washington Office on 1 April 1987, I have decided to write you an update regarding the situation with the Social Security Administration and the Health Care Financing Administration.

First, I must thank your office staff, particularly Ms. Renee Cohen, who was quite instrumental in rectifying the situation. Even though it is not right yet she has been persistent and probably indispensable in getting through the beaurocratic quagmire of contacts that it has been necessary to make.

As I indicated to you and Ms. Bunnell, that day I had accepted a new position knowing fully that I was probably committing financial suicide because undoubtedly Social Security would not be helpful. After about 1 month of work I reported that I was working to the regional Social Security office. Within 2 months my disease (MS) began to exhacerbate. I cut back from full time to part time and again, reported the change in status to the Social Security office. Status change notwithstanding it was determined that my disability had "ceased" to exist because I was employed and earning greater than $300. per month as is currently allowed by law. (Hopefully Mr. Sikorsy's bill will become law and at least for some, will improve this situation.

Also, by regulation, even if I had successfully been able to keep theat position, I was entitled to keep Medicare coverage for 1 year. Apparently the Health Care Financing Administration is not aware of this as they have proceeded to discontinue my Medicare coverage. Despite the reinstatement of payment status for Social Security Disability Income, they (HCFA) have not reinstated the coverage.

I did however receive a letter from Social Security, with a new Medicare ID card indicating that the coverage had also been reinstated. Despite this, all claims that have been presented to Medicare for payment over the past 3 to 4 months have been disallowed and no payment has been made to the medical providers. Clearly the communication between HCFA ans SSA leaves something to be desired.

Again I contacted Ms. Cohen to request her assistance in sorting out this mess. Even she has had a good deal of difficulty finding the appropriate accountable person. I thought you might be interested in hearing about this situation, in view of our discussion relating to disincentives which discourage benefit recipients from returning to tax payer status rather than that of recipient.

Again, I will offer to do anything I can to encourage passage of HR Bill #12. I will look to your office for guidance in this matter. I am willing to testify if that is needed. If you have any questions or need additional information please do not hesitate to write or call (301- 381-0650).

Thank you for your assistance in this matter.

Sincerely yours,

Maria S Turley
Maria S. Turley

[Submissions for the record:]

October 4, 1988

The Honorable Andy Jacobs, Jr.
Chairman, Subcommittee on Social Security
House Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Representative Jacobs:

On behalf of the Association for Retarded Citizens of the United States, I request that this letter be entered into the printed record of the Hearing on Proposals to Improve the Quality of Services Provided by the Social Security Administration, held on Thursday, September 22, 1988, by the Subcommittee on Social Security.

The ARC wishes to convey its support for H.R. 5250, the "Social Security Services Improvements Act of 1988," sponsored by Representative Sander Levin. The testimony submitted for the September 22 hearing documents numerous instances of major problems with the Social Security Administration's (SSA) service to the public. The issues and concerns presented in testimony are raised not only by advocates, legal representatives, claimants, and beneficiaries, but also by SSA employees themselves, as documented by the American Federation of Government Employees.

Consequences of poor service, reduced staffing, and inaccurate and misleading information can be drastic to the beneficiary or claimant affected. We must remember, at all times, that beneficiaries of the various Social Security programs are, by law, entitled to their benefits. An individual's loss of benefits due to faulty SSA service or practices is simply inexcusable and unacceptable. Problems documented throughout the hearing testimony are even further exacerbated when the individual has a mental impairment such as mental retardation. Problems experienced by typical beneficiaries and claimants are multiplied when the person has mental retardation and is, thereby, even further limited in his/her ability to deal with the faulty information or practices of SSA.

(continued)

arc Governmental Affairs Office 1522 K Street, N.W. Suite 516 Washington, D.C. 20005 (202) 785-3388
Association for Retarded Citizens of the United States
Formerly National Association for Retarded Citizens

We urge the Subcommittee to place a high priority on these service issues for the 101st Congress. We stand ready to assist you and the Subcommittee staff in working to improve, where necessary, H.R. 5250 and to build support for its passage.

Sincerely,

Dee Everitt
Chairperson
Governmental Affairs
Committee

McDERMOTT, WILL & EMERY
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
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September 20, 1988

Mr. Robert J. Leonard
Chief Counsel
Committee on Ways and Means
U. S. House of Representatives
Room 1102, Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Leonard:

In response to the September 9, 1988 announcement in Taxation, Budget and Accounting regarding the subcommittee's September 22, 1988 hearing on proposals to improve services by the Social Security Administration (SSA), I would like to present my opinion from a unique perspective.

I have held several technical positions and a supervisor position within the SSA, Great Lakes Program Service Center during 9/67-3/75 (full time) and 7/79-4/86 (permanent part-time). In direct response to SSA's announcement in 1985 of a 25% staff reduction over a five year period which would significantly affect Claim Authorizors and knowing advancement for me during a period of downsizing was unlikely, I successfully translated my skills into the private sector and accepted a posiion within the Employee Benefits legal practice of McDermott, Will & Emery, the largest and most sophisticated employee benefit practice nationally. A portion of my responsibilities is the handling of client social security and medical issues in which I deal directly with SSA and Health Care Financing Administration (HCFA).

I have read HR 5250 and wish to specifically respond to Section 3 of the Bill, Demonstration Projects, Relating to Accountability for Telephone Service Center Communications and more generally discuss SSA's written communications.

The highest level of frustration in the private sector with the SSA is, one: the lack of professionalism of SSA employees, two: the inability to obtain a timely and accurate response to questions and issues and three: the inability to communicate back with a specific SSA employee.

SSA over the past five years has emphasized the use of inquiries and initiation of claims by telephone through the telephone centers while de-emphasizing personal visits to the district office. However, I feel that the decision to staff the telephone centers with individuals who do not have the highest level of technical knowledge has lead to SSA public relations problems. An employee of SSA responding to telephone inquiries should be not less than a Claims Representative or Claims Authorizor (a corresponding position in a program center). These journeyman positions are GS-10 level. Employees working in these positions require a college degree or advanced degree if hired from the outside. They would have received a high level of technical training, worked directly with Social Security laws and regulations and have the background to understand issues and questions from a broader perspective. These individuals are in a position to ask the right questions and more accurately respond to questions. The "accountability procedures" under proposed Section 3(b)(1)(A)-(E) to fully document telephone inquiries will only be as successful and effective as the SSA representative's ability to provide the correct technical information.

With respect to SSA's written communication, I want to bring to your attention a recent experience to point out that SSA's position to simplify written correspondence should not be at the expense of essential facts. A letter dated February 7, 1988 (Exhibit A) was received by our client. He felt the letter did not explain why his benefit increased, the effective date of the increase and he felt the new benefit amount was low. Consequently, he referred the matter to his attorney. SSA issued this letter based on a cyclical recomputation of a beneficiary's monthly benefit amount due to the inclusion of 1986 earnings and the application of delayed retirement credits (DRC's) through 1987. Beneficiaries whose earnings, due to work, would increase their benefit amount receive an automatic recomputation of benefits effective in January of the year following the one in which the earnings were received as set out by section 215(f)(2) of the Social Security Act. Beneficiaries age 65 to 72 whose earnings, due to work are such an amount which preclude the receipt of cash benefits are entitled to a benefit increase equal to 1/2 of 1% for each month their earnings preclude cash benefits as set out by sec- tion 202(w) of the Social Security Act. The crediting of DRC's is effective in January of each year based on no cash benefits from one to twelve months of the year following the one in which the cash benefits were not paid.

I have modified the SSA letter (Exhibit B) with pertinent facts which provide a more accurate explanation of the SSA's action and may have prevented this beneficiary from further inquiry. I must add that it took the SSA two tries to provide a complete and accurate letter of explanation.

Should you feel my comments are significant to current testimony, please feel free to contact me. I have enclosed a copy of my resume to provide you with my credentials.

Very truly yours,

Ellen Korchek

Ellen K. Korchek
Legal Assistant

EKK:rc
Enclosures
cc: Representative Andy Jacobs

[THE COPY OF MS. KORCHEK'S RESUME IS BEING RETAINED IN THE COMMITTEE FILES.]

Social Security Administration
Retirement, Survivors, and Disability Insurance
Notice of Change in Benefits

EXHIBIT A

Great Lakes Program Service Center
600 West Madison Street
Chicago, Illinois 60606

Date: February 07, 1988
Claim Number: [redacted]

[redacted]

We checked our records to see if any changes in your benefits are necessary. We are increasing your benefit amount. You will receive the higher benefit when we can pay you again.

We are increasing your benefit amount to give you credit for additional earnings which were not included when we figured your benefit before.

WHAT WE WILL PAY AND WHEN

- We still cannot pay you your regular monthly benefit at this time.
- When we can pay you again, your monthly payment will be $848.00.

DO YOU THINK WE ARE WRONG?

If you think we are wrong, you have the right to appeal. We will correct mistakes. We will look at any new facts you have. Then a person who did not make the first decision will decide your case again.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you receive this letter.

IF YOU HAVE ANY QUESTIONS

If you have any questions, you should call, write or visit any Social Security office. If you visit an office, please bring this letter. It will help us answer your questions.

Dorcas R. Hardy

Dorcas R. Hardy
Commissioner
of Social Security

Social Security Administration
Retirement, Survivors, and Disability Insurance
Notice of Change in Benefits

EXHIBIT B

Great Lakes Program Service Center
600 West Madison Street
Chicago, Illinois 60606

Date: February 07, 1988
Claim Number: [redacted]

[redacted]

We checked our records ~~to see if~~ for any necessary changes in your benefits. ~~are necessary.~~ We ~~are~~ have increas~~ing~~ed your benefit amount. You will receive the higher benefit when we can pay you again.

We ~~are~~ have increas~~ing~~ed your monthly benefit amount effective January, 1988 to give you credit for additional earnings which were not included when we last figured your benefit ~~because~~ and to give you credit for months in 1987 your earnings precluded payment after age 65 and before age 72.

WHAT WE WILL PAY AND WHEN

- We ~~still~~ cannot pay you your regular monthly benefit at this time.
- When we can pay you again, your monthly payment will be $848.00. This amount has been reduced by the current supplemental medical insurance premium.

DO YOU THINK WE ARE WRONG?

If you think we are wrong, you have the right to appeal. We will correct mistakes. We will look at any new facts which you ~~send~~ provide. Then a person who did not make the first decision will decide your case again.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you receive this letter.

IF YOU HAVE ANY QUESTIONS

If you have any questions, you should call, write or visit any Social Security office. If you visit an office, please bring this letter. It will help us answer your questions.

Dorcas R. Hardy

Dorcas R. Hardy
Commissioner
of Social Security

205

CONSTANCE A. MORELLA
8TH DISTRICT, MARYLAND

COMMITTEES:
POST OFFICE AND CIVIL SERVICE
SCIENCE, SPACE, AND TECHNOLOGY
SELECT COMMITTEE ON AGING

Congreſs of the United States
House of Representatives

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DISTRICT OFFICE:
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SUITE 302
WHEATON, MD 20902
(301) 946-6801

OCT 28 1988

October 24, 1988

The Honorable Andrew Jacobs
Chairman
Social Security Subcommittee
1102 Longworth HOB
Washington, D.C. 20515

Dear Chairman Jacobs:

I am enclosing a letter from one of my constituents, Mr. Robert Lurensky of Bethesda, Maryland. Mr. Lurensky has compiled a chronology of his efforts to correct his earnings statement at the Social Security Administration. If it is not too late, I would appreciate it if his letter could be included in the hearing record for the Subcommittee oversight hearing held in late September.

Thank you for your attention in this matter.

With best wishes,

Sincerely,

Connie Morella

Constance A. Morella
Member of Congress

CAM:ch

Enclosure

7520 Holiday Terrace
Bethesda, Maryland 20817
September 17, 1988

The Honorable Connie Morella
House of Representatives
Washington, D.C. 20515

Dear Mrs. Morella:

At the request of your assistant, Mr. Carlos Cooper, I am forwarding to you a Chronology of my efforts to have the Social Security Administration accurately post corrections to its official statement of my earnings for the years 1972 through 1977.

I am, of course, very interested in having the Social Security Administration correct my official record. It is seven years since I initiated this correction, and now I am nearing retirement age and the corrections are not yet made. Although, Social Security assures me that it will pick up the correction when I retire, if my past experience with the agency is any criterion, I cannot be sure of this.

Beyond this personal consideration, is my concern for those millions of Americans, who are supposed to be sheltered by the Social Security system, and who might not be as perseverant, articulate, or methodical as I have been in pursuing my claim. How many mistakes has the Social Security Administration made on their accounts, and how effective has the agency been in correcting these mistakes? If my case is an example, many hard working and deserving United States citizens could have been and are being badly hurt.

I thank you for your interest in my case. Mr. Carlos Cooper of your staff has been a sympathetic observer and a hard worker on my behalf. Until we finally resolve this case, please continue to help me.

Sincerely,

Robert L. Lurensky

CHRONOLOGY OF EFFORTS TO CORRECT A STATEMENT OF EARNINGS

Robert Lee Lurensky

September 3, 1981	Southeastern University filed Form 941C, a Statement to Correct Information, and a check in the amount of $1,205.48 with the Internal Revenue Service. The University paid one-half of the FICA tax adjustment and Robert Lurensky paid the other half. This FICA tax adjustment covered $10,328 of earnings from June 30, 1972 through December 31, 1977.
February 1, 1984	Upon inquiry by Robert Lurensky, Social Security (Office of Central Records Operations) notified him that, because it had no record of having received a Form 941C from the Internal Revenue Service, it was unable to correct the earnings obtained from Southeastern University.
February 17, 1984	Robert Lurensky obtained a copy of the check and sent it with a copy of the completed Form 941C to Ms. Crystal Crowder of the Social Security Washington, D.C. Northwest District Office. The reverse side of the check indicated that the Internal Revenue Service had deposited the check.
June 19, 1984	In response to a letter written by The Honorable Michael D. Barnes to Mr. Martin Taffet, Director of the Social Security Administration Northeastern Program Service Center on behalf of Robert Lurensky, Mr. Michael Kuntz, Acting Director of the Internal Revenue Service Center, Mid-Atlantic Region, stated that Internal Revenue received the $1,205.48 payment on September 9, 1981. Mr. Kuntz informed Mr. Barnes that, to enable them to correct Robert Lurensky's social security account, Internal Revenue forwarded the check and a copy of Form 941C to Social Security on September 9, 1981.

December 10, 1984	In a letter addressed to Robert Lurensky, Mr. Edward P. Arthur, Director of the Office of Central Records Operations indicated Social Security had completed examination of Robert Lurensky's earnings record, and, from the evidence obtained, had taken the necessary action to credit his record with additional earnings. Mr. Arthur stated that, since earnings adjustments are processed periodically rather than on a day-to-day basis, Robert Lurensky should wait 9 months before requesting a computer-prepared earnings statement including any corrections shown in his letter.
September 28, 1986	Robert Lurensky wrote to The Honorable Michael Barnes requesting his help. Mr. Lurensky stated that two years after Social Security told him that it would credit his record with corrected earnings it had not done so.
November 21, 1986	Responding to Mr. Lurensky's petition to Mr. Barnes, Mr. Edward P. Arthur, Director of Central Records Operations, wrote to Mr. Lurensky stating that "due to a clerical error these earnings have not been processed as stated in our letter of December 10, 1984". He further said that "I have taken the necessary action to assure reprocessing of these reports". He asked Mr. Lurensky to wait at least 6 months before requesting another computer prepared statement of earnings. He assured him that his correct earnings "are immediately available from your folder in the event a claim is filed under your Social Security number".

June 28, 1987	Corrections still not posted to his official record, Mr. Lurensky petitioned The Honorable Connie Morella for assistance.
October 1, 1987	Responding to Ms. Morella's petition, in a letter addressed to Robert Lurensky, Mr. Arthur wrote as follows: "In our letter of 11/21/86, we informed you that the earnings were not posted due to a clerical error. Although I took all possible action to assure that your record would be corrected by mid 1987, that was an unrealistic time frame. A more realistic time frame would have been 18 months. Therefore, please be patient and give us another 12 months to post the additional earnings to your record. The time it takes is due to computer acheduling. I will check your record in 3 months from today and every month thereafter to assure that your record will be corrected."
September 17, 1988	The Social Security Administration has not as yet corrected Robert Lurensky's official social security record.

Statement of
Representative Edward R. Roybal

Hearing on Social Security Quality of Service

Before the Subcommittee on Social Security
Committee on Ways and Means

September 22, 1988

I commend Chairman Jacobs for convening this important hearing on the quality of services provided by the Social Security Administration (SSA). Over the past few years I have become increasingly concerned about the capacity of SSA to provide high quality service to the nation's workers and beneficiaries.

This hearing is especially timely in light of recent changes in SSA's service changes and demands. SSA is currently redesigning its telephone system, implementing a new system to provide workers with reports on their past benefits and current contributions, and working a backlog of millions of cases in which there were discrepancies between SSA and Internal Revenue Service (IRS) records of earnings. Yet, before we even have a chance to evaluate the effectiveness and adequacy of these major program changes, SSA is in the midst of a plan to cut 21% (17,000) of its staff by 1990. This despite the fact that the number of beneficiaries is projected to increase by 8.1% during this time period. I am extremely skeptical of SSA's presumption that they can provide more and adequate services to greater numbers of Americans with substantially fewer staff.

In 1985 we were also informed that SSA could do more with less when we were threatened with the potential closing of hundreds of local Social Security offices by the President's FY '86 budget which sought a 21% cut in Social Security staff. My Subcommittee on Retirement Income and Employment of the Select Committee on Aging compiled a list of over 700 of the 1340 Social Security offices which could have been closed or downgraded according to the proposed criteria. Testimony indicated that these closings would produce many undue hardships and barriers to the provision of basic assistance to beneficiaries. Consequently, as a member of the House Appropriations Committee, I worked to provide funding in the FY 1986 Labor-HHS Appropriations bill which supported an SSA staffing level of 1,000 positions above the President's request and which added report language that office closings shall not exceed historical averages.

I firmly believe that many of the service problems which have plagued SSA over the past few years could be alleviated by establishing SSA as an independent agency. In the 98th Congress I introduced the first legislation (H.R. 5904), to create a board-governed independent agency. The bill included a "beneficiary bill of rights" providing for: fair and equitable treatment of all persons; prohibition against discrimination on account of age, sex, race, creed, color, handicap, national origin, or economic condition; prompt, professional, and effective services which are accessible to the public; timely and proper benefit payments; and a full, fair, and impartial administrative appeals process.

I am pleased that H.R. 5250, introduced by Representatives Sander Levin and Jim Moody, contains similar provisions to my "beneficiary bill of rights." H.R. 5250 also requires SSA to inform all applicants that there have been problems with SSA's wage credit records, and waives the current 3 year, 3 month, and 15 day statute of limitation for correcting wage records. As Chairman of the Select Committee on Aging and Treasury Appropriations, I worked to get SSA and IRS to resolve problems related to the proper crediting of individuals' Social Security earnings. Although I am pleased that the agreement was signed, I am concerned that a vast number of cases will never be resolved. By providing beneficiaries with notice that data concerning their employment history may be missing or incorrect, there is a greater likelihood that more retirees will receive all the benefits to which they are entitled.

I share the Social Security Subcommittee's concern about the implications of a new national "800" number. For many older Americans, direct access to local field offices, either on a walk-in basis or by telephone is crucial for prompt resolution of casework difficulties. Yet, under this new service system, 60% of the population will have their inquiries routed to the 37 teleservice centers (TSCs) in operation in various parts of the country by October 1st, 1988. Calls to local offices will be intercepted by the "800" number and claims will be transferred to the field offices by means of a Modernized Claims System (MCS) screen. When claims cannot be handled through the mail, appointments may then be made at the field offices.

One of my primary concerns about this transition to the "800" service is the lack of continuity of services. Clients often will not know, or may not remember, who they have spoken to at a TSC. It is possible that a caller from California, for example, may be routed to a main traffic center in another State. I am greatly concerned that cases will be "lost" or delayed in the process of transmitting claims information from the TSC's to the field offices, and that it will be difficult to track cases. There also seems to be a great deal of confusion about when and why a person would visit a field office in person. Field office staff have indicated that MSC screens are not yet fully operational. In the meantime, claims information is being sent to the field offices through the mail. This is an inefficient and time consuming way to process claims.

SSA asserts that the number of field offices will not be reduced as a result of the "800" service, although SSA materials refer to "realignment of resources" to TSC's. The TSC's will need increased staff, especially as the remaining 40% of the population is transitioned to the new telephone service. **Since SSA is in the process of reducing 17,000 staff by 1990, the preeminent question is - can SSA increase services to the public, reduce staff, and still provide quality services, or will we see decreased accessibility to SSA's services, increased inaccuracy of information provided, and a lack of continuity of programs? Given the crucial importance of Social Security to the lives and well-being of millions of Americans, we must have careful documentation and justification before we blindly eliminate one out of every five of our Social Security staff.**

It is too early to determine the effectiveness and efficiency of the "800" service. The new system needs to be closely monitored to gather such data as suggested in H.R. 5250. The teleservice system has sophisticated management information capabilities, such as percent of callers getting a busy signal, percent of callers who go into queue, maximum average waiting time in queue, and average talk time per call. These data must be submitted to key Congressional Committees on a regular basis so that thay may be analyzed before substantial reductions in SSA staff are allowed to take place.

I fully intend to continue to carefully monitor the quality of services provided by SSA. I look forward to working with other members of Congress to determine if the millions of persons who file claims and inquire about their benefits each year are receiving prompt and effective services, and timely and accurate benefit payments.

STATEMENT FOR THE RECORD
THE HONORABLE TOM TAUKE
HEARING OF THE SUBCOMMITTEE ON SOCIAL SECURITY
COMMITTEE ON WAYS AND MEANS
SEPTEMBER 22, 1988

I commend the chairman for convening this important hearing to discuss the quality of claimant and beneficiaries services by the Social Security Administration. High quality, easily accessible services are vitally important to my constituents. Northeastern Iowans are accustomed to ready and friendly service at the local field offices. Social Security proposals that limit, alter and end any traditional practice of the agency sends up red flags. And I have reservations about several modified and new service objectives.

On October 1st, the SSA will fully implement nationwide toll free 800 teleservice for claimants and beneficiaries. This step, along with Systems Moderization, finally pulls the SSA out of the dark ages and into the 20th century. I commend Commissioner Hardy for her diligent work to modernize the agency and improve beneficiary services. Generally, these important program enhancements will expedite routine Social Security business and increase access to the agency. At the same time, however, several concerns have come to my attention in regard to impact of teleservice on local office services.

First, the SSA intends to encourage greater use of teleservice and discourage local office visits. A survey conducted by the Office of Inspector General reports that a majority of Social Security claimants and beneficiaries prefer to conduct business by telephone. My concern is that access to the local office and personal service could deteriorate. It is my understanding that the agency will issue specific teleservice objectives. As the teleservice system matures, teleservice will handle more and more business than the local office. While objectives are not quotas, I am deeply concerns that 800 teleservice could lead to reduced access to local office and potentially to field office closings.

Secondly, the SSA will no longer publish local office telephone numbers in local telephone books. All SSA calls will be routed through teleservice centers. I am concerned that teleservice will substitute for personal service in the local office. Telephone calls from my constituents will first be routed to Des Moines. When the lines are jammed in Des Moines, their calls will be re-routed to Birmingham, Alabama. In cases that require additional information, the teleservice representative will refer the case back to the local office. Claims processing time will increase rather than decrease.

It is my understanding that the teleservice centers cannot automatically refer claims to the local offices because the computer system is not capable of that function yet. Thus, claims are sent back to the local offices through the mail. Delays in processing claims could obviously be avoided if the computer system has the capability to transmit claims information directly to local offices and also if claimants and beneficiaries continue to have access to the local office. The local Social Security office is the frontline of beneficiary services and teleservice should not impede access to personal service.

When the SSA announced the beginning of personalized earnings and benefits statements on August 5th, the 800 telephone service was jammed. On that day, the Dubuque Bank and Trust received 580 calls during one day. The SSA 800 telephone number is similar to the bank's 800 number. It seems that many people transposed the telephone number and reached the bank instead of the SSA. Out of necessity, the bank was forced to request that the telephone company intercept and divert the Social Security calls. The bank must pay for each wrong number as well as for the temporary use of another 800 telephone number at a significant cost. Evidently, this problem has occurred in other areas. I know that the bank has contacted the SSA and I expect that the agency will address this problem.

Last year I was contacted by constituents who were concerned about the SSA ending rural community visits. Until last year, the local Social Security offices would send claims representatives to rural communities to assist rural residents with claims and benefits questions. For the most part, these contact stations were not used enough for the SSA to continue to send claims representatives into the field in my district. It is my understanding that community visits have ended in most parts of the country. My concern is that as the SSA pulls out of rural America, the next step will be to move out of other small communities, and close branch offices.

More than 15 percent of Iowa's population is age 65 and older. Branch and field offices in Iowa are vitally important to the delivery of high quality beneficiary services. The public's confidence in the Social Security system is a bit shaky and efforts to scale back field operations enhances the public's concerns.

By and large, the addition of teleservice and Systems Modernization will improve beneficiary services. However, service enhancements must not discount the value of personal service in local field offices.

○